

Exhibit 3

REDACTED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

- - - - - X
 IN RE: VALSARTAN, LOSARTAN, AND : MDL NO. 2875
 IRBESARTAN PRODUCTS LIABILITY :
 LITIGATION, :
 :
 THIS DOCUMENT RELATES TO :
 ALL ACTIONS :
 - - - - - X

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Veritext Virtual Zoom Videotaped deposition of RENA M. CONTI, Ph.D., taken on Friday, February 11, 2022, in Glenside, Pennsylvania, commencing at 9:04 a.m. Eastern Standard Time, before Jamie I. Moskowitz, a Certified Court Reporter and Certified Livenote Reporter.

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<p style="text-align: right;">Page 10</p> <p>1 TABLE OF CONTENTS</p> <p>2 RENA M. CONTI, Ph.D.</p> <p>3 Examination</p> <p>4 By Ms. Kapke.....Page 11</p> <p>5 By Mr. Campbell.....Page 100</p> <p>6 By Mr. Ostfeld.....Page 182</p> <p>7 Index of Exhibits.....Page 8</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 12</p> <p>1 A Yes.</p> <p>2 Q What did you review?</p> <p>3 A My report.</p> <p>4 Q Anything else?</p> <p>5 A I looked up some statistics regarding</p> <p>6 the revenues of retailers and wholesalers in this</p> <p>7 case.</p> <p>8 Q Statistics from your report or</p> <p>9 statistics that were independent of references in</p> <p>10 your report?</p> <p>11 A The shareholder reports of the -- the</p> <p>12 retailers and the wholesalers.</p> <p>13 Q So, like, the 10-Ks?</p> <p>14 A Correct.</p> <p>15 Q Okay. Okay. Gotcha.</p> <p>16 And I -- I honestly don't remember</p> <p>17 that. Are those cited in your report? Are the --</p> <p>18 are retailers' --</p> <p>19 A No, they're not. No, they're not.</p> <p>20 But there -- there are things that I do very</p> <p>21 typically when I'm preparing for a deposition.</p> <p>22 They're public. They're also things that I -- I</p> <p>23 spend time teaching, using. In fact, some of the</p> <p>24 defendants in this case are companies that my class</p> <p>25 on Strategy in the Pharmaceutical Industry is</p>
<p style="text-align: right;">Page 11</p> <p>1 THE VIDEOGRAPHER: The time is 9:04.</p> <p>2 This begins Media Unit Number 1. We're back on</p> <p>3 the record.</p> <p>4 MR. GOLDBERG: Good morning, Doctor.</p> <p>5 This is Seth Goldberg, again. I'm not on</p> <p>6 video. I will be momentarily. But at this</p> <p>7 point, I'm going to pass the witness to the</p> <p>8 next questioning counsel. I am not concluding</p> <p>9 my questioning, but in the interest of time, I</p> <p>10 want to give other counsel an opportunity to</p> <p>11 ask questions.</p> <p>12 THE COURT REPORTER: Kara, you're on</p> <p>13 mute.</p> <p>14 EXAMINATION BY MS. KAPKE:</p> <p>15 Q Good morning, Dr. Conti. My name is</p> <p>16 Kara Kapke. I represent CVS and Rite Aid, and I'm</p> <p>17 going to be asking you questions primarily about</p> <p>18 your opinions vis-a-vis the retail pharmacy</p> <p>19 defendants.</p> <p>20 My first question is, do you</p> <p>21 understand that you're still under oath here today?</p> <p>22 A Yes.</p> <p>23 Q Great. Did you review any documents</p> <p>24 or materials last night or this morning before</p> <p>25 starting today's deposition?</p>	<p style="text-align: right;">Page 13</p> <p>1 currently studying, so part of my review was to get</p> <p>2 ready for my class on Monday.</p> <p>3 Q Got it. Okay.</p> <p>4 Did you -- we talked about, yesterday,</p> <p>5 you not reviewing any depositions, and I wanted to</p> <p>6 confirm that you have not reviewed any depositions</p> <p>7 of retailer pharmacy witnesses in this case; is that</p> <p>8 correct?</p> <p>9 A That's correct.</p> <p>10 Q Did you review any deposition exhibits</p> <p>11 from the depositions of the retail pharmacy 30(b)(6)</p> <p>12 witnesses?</p> <p>13 A Why don't we check my Appendix B?</p> <p>14 There's a lot of documents, so, let's just check.</p> <p>15 So there is a declaration -- so are</p> <p>16 you asking for declarations? Is that correct?</p> <p>17 Q I'm asking if you reviewed any</p> <p>18 written -- any -- strike that.</p> <p>19 I'm asking if you reviewed any</p> <p>20 deposition exhibits from the depositions of the</p> <p>21 retail pharmacy deponents.</p> <p>22 A No, I did not, not that I'm aware of.</p> <p>23 Q How about any meet and confer letters</p> <p>24 or correspondence from -- from counsel for the</p> <p>25 retail pharmacy defendants?</p>

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<p style="text-align: right;">Page 14</p> <p>1 A No.</p> <p>2 Q Have you reviewed any opinions</p> <p>3 relating to discovery from Special Master</p> <p>4 Judge Vanaskie or Judge Schneider?</p> <p>5 THE COURT REPORTER: Or Judge...</p> <p>6 MS. KAPKE: Schneider.</p> <p>7 THE COURT REPORTER: Okay.</p> <p>8 THE WITNESS: There's a weird echo,</p> <p>9 and I didn't hear half your sentence. I'm</p> <p>10 sorry.</p> <p>11 BY MS. KAPKE:</p> <p>12 Q No, that's okay.</p> <p>13 Have you reviewed any opinions</p> <p>14 relating to discovery from Special Master</p> <p>15 Judge Vanaskie or Judge Schneider?</p> <p>16 A No. All I know is that I have very</p> <p>17 limited data -- limited data from the retailers.</p> <p>18 Q And you mentioned yesterday that you</p> <p>19 read one of Judge Kugler's opinions in -- in this</p> <p>20 case. What opinions of Judge Kugler's have you read</p> <p>21 for purposes of this litigation?</p> <p>22 A Just what I read to you -- you all</p> <p>23 yesterday.</p> <p>24 Q Okay. Did you read the entire opinion</p> <p>25 that -- that the snippet that you read yesterday</p>	<p style="text-align: right;">Page 16</p> <p>1 THE COURT REPORTER: I'm sorry,</p> <p>2 Walgreens...</p> <p>3 THE WITNESS: Walgreens and the</p> <p>4 University of Chicago had a long-standing data</p> <p>5 collaborative, and I was in charge of that data</p> <p>6 collaborative. I wrote several papers with the</p> <p>7 head of public economics at Walgreens when I</p> <p>8 was faculty there.</p> <p>9 THE THE COURT REPORTER: When you were</p> <p>10 faculty there?</p> <p>11 THE WITNESS: When I was faculty at</p> <p>12 the University of Chicago.</p> <p>13 BY MS. KAPKE:</p> <p>14 Q Did you rely on the data that you</p> <p>15 reviewed in your faculty life relating to Walgreens</p> <p>16 and CVS for purposes of your opinions in this</p> <p>17 matter?</p> <p>18 A Well, so we talked about this</p> <p>19 yesterday. I primarily am a researcher, and I teach</p> <p>20 about the pharmaceutical industry. And so the</p> <p>21 papers that I wrote with Walgreens data are in my</p> <p>22 CV. They're listed. And to the extent that I know</p> <p>23 something about how these pharmacies are collecting</p> <p>24 information, what data they have on dispensing</p> <p>25 prescriptions, is -- is informed both by the work</p>
<p style="text-align: right;">Page 15</p> <p>1 came from, or just a portion of it?</p> <p>2 A I read the full paragraph that that</p> <p>3 portion I read came from, but that's it.</p> <p>4 Q Okay. I -- I want to turn to your</p> <p>5 report, Conti Exhibit 5, and Attachment B, which we</p> <p>6 just talked about. And on Pages 4 to 8 of the</p> <p>7 attachment, under the heading "Electronic Data," and</p> <p>8 then the subheading, "Retailer Claims Data," you</p> <p>9 have a listing of specific documents relating to</p> <p>10 retail pharmacy defendants that you reviewed,</p> <p>11 correct?</p> <p>12 A Yes.</p> <p>13 Q Is it okay if I refer to that group of</p> <p>14 data by the subheading "Retailer Claims Data"?</p> <p>15 A Sure.</p> <p>16 Q Okay. I -- I just want to make sure</p> <p>17 that you'll understand that if I'm referring to</p> <p>18 retailer claims data that that's what I'm referring</p> <p>19 to. B -- go ahead.</p> <p>20 A Okay. Yeah. Just one thing that I</p> <p>21 should tell you is that -- so in my research, I have</p> <p>22 spent a fair amount of time working with data from</p> <p>23 CVS and also from Walgreens, specifically the</p> <p>24 Walgreens -- Walgreens and the University of Chicago</p> <p>25 had --</p>	<p style="text-align: right;">Page 17</p> <p>1 that I do in research, but also the work that I've</p> <p>2 done in --</p> <p>3 BY MS. KAPKE: That you've done in...</p> <p>4 THE WITNESS: This particular matter.</p> <p>5 BY MS. KAPKE:</p> <p>6 Q In terms of the actual calculations</p> <p>7 you made, not in your opinions, but the actual</p> <p>8 calculations that you made, did you rely on any of</p> <p>9 that, I'll call it faculty data, or did you solely</p> <p>10 rely on the retailer claims data?</p> <p>11 A I relied on the retailer claims data</p> <p>12 that was provided to me in this matter to do my</p> <p>13 calculation. But I have a broader understanding of</p> <p>14 what is collected by the retail pharmacies that</p> <p>15 included the ones that are named in this matter.</p> <p>16 Q Okay.</p> <p>17 A Due --</p> <p>18 THE COURT REPORTER: I'm sorry?</p> <p>19 THE WITNESS: Due to the research that</p> <p>20 I have done with them.</p> <p>21 BY MS. KAPKE:</p> <p>22 Q Understood.</p> <p>23 The documents listed here for the</p> <p>24 retailer claims data are not identified by a Bates</p> <p>25 number, but is it your understanding that the</p>

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<p>Page 18</p> <p>1 documents referenced there are the documents</p> <p>2 produced by the retail pharmacy defendants in this</p> <p>3 litigation with Bates numbers?</p> <p>4 A That is my understanding.</p> <p>5 MS. KAPKE: I'm going to introduce,</p> <p>6 and mark as Conti Exhibit 7, the retailer</p> <p>7 damages output Excel spreadsheet file from the</p> <p>8 materials that you provided. And it's on the</p> <p>9 screen. And for the record --</p> <p>10 (Whereupon, Exhibit Conti 7 was marked</p> <p>11 for Identification.)</p> <p>12 THE WITNESS: Can you refer me to a</p> <p>13 specific one?</p> <p>14 BY MS. KAPKE:</p> <p>15 Q I'm sorry. What?</p> <p>16 A Can you refer me to the specific</p> <p>17 output that's listed on my Exhibit B?</p> <p>18 Q This is the retailer damages output</p> <p>19 Excel spreadsheet that you provided.</p> <p>20 A I'm asking you, is it the backup, or</p> <p>21 is it one of the documents that is listed --</p> <p>22 Q It's the backup.</p> <p>23 A -- in Exhibit B. I can't hear you.</p> <p>24 I'm sorry.</p> <p>25 Q So if you -- this is something that</p>	<p>Page 20</p> <p>1 BY MS. KAPKE:</p> <p>2 Q So I'm marking it Conti Exhibit 7.</p> <p>3 You, in the materials provided to us, labeled it,</p> <p>4 entitled it "Retailer Damages Output."</p> <p>5 A But for -- for unjust enrichment or</p> <p>6 liability?</p> <p>7 Q You did not make a distinction in what</p> <p>8 materials were sent to us.</p> <p>9 A I see. Well, I'm going to have to</p> <p>10 double check with my staff then, please.</p> <p>11 Q What are you double checking?</p> <p>12 A Whether this is this for the liability</p> <p>13 claims or for the unjust enrichment calculation.</p> <p>14 Q Is it your suggestion that you have</p> <p>15 two spreadsheets -- a backup data for those?</p> <p>16 A No. As I testified yesterday, the</p> <p>17 unjust enrichment and liability estimates are</p> <p>18 slightly different. You can see that in my Table 2</p> <p>19 and Table 3 of my report. And -- and the difference</p> <p>20 is largely related to the inclusion or exclusion of</p> <p>21 specific states.</p> <p>22 There is no indicator here for</p> <p>23 whether -- for when the state is indicated for which</p> <p>24 calculation. And so I just want to double check</p> <p>25 with my staff. And I --</p>
<p>Page 19</p> <p>1 you derived, and you -- I'm -- I'm not sure I</p> <p>2 understand your --</p> <p>3 A I'm asking, is this the backup that we</p> <p>4 provided to you, or is it one of the documents that</p> <p>5 you listed here -- I'm sorry -- that I listed here</p> <p>6 in Exhibit B?</p> <p>7 Q No. This is the backup that you</p> <p>8 provided to us.</p> <p>9 A Just wanted to make sure.</p> <p>10 Q Yes. And so I will represent for the</p> <p>11 record that this spreadsheet has 3,741 rows, and as</p> <p>12 you can see --</p> <p>13 MS. KAPKE: Maybe it can be made a</p> <p>14 little bit larger.</p> <p>15 BY MS. KAPKE:</p> <p>16 Q There are five columns across the top</p> <p>17 reading retailer, entity, state, product name and</p> <p>18 consumer impact. Do you --</p> <p>19 A Okay.</p> <p>20 THE WITNESS: Can we -- can we scroll</p> <p>21 all the way down so I can see -- make sure that</p> <p>22 this is actually a full document, please?</p> <p>23 Keep on going. Okay. Okay. So just</p> <p>24 give me a second. And this is for -- the</p> <p>25 backup for which exhibit?</p>	<p>Page 21</p> <p>1 Q I'm -- and I'm sorry. I'm not trying</p> <p>2 to be difficult. I just don't understand what you</p> <p>3 need to double check.</p> <p>4 A All I want to know is whether this</p> <p>5 backup is for the liability or for the unjust</p> <p>6 enrichment calculations. That's all.</p> <p>7 You'll see there's Table 2.</p> <p>8 Q Right.</p> <p>9 A Then there's Table 3. And they</p> <p>10 are -- there's two theories of liability for</p> <p>11 Table 2. They differ underlying Table 2. And then</p> <p>12 in Table 3, there's an unjust enrichment</p> <p>13 calculation. And each one in the series of damages</p> <p>14 vary slightly for the retailers, related to what</p> <p>15 states are included, which are not listed here.</p> <p>16 Q Right. Let's' -- we'll -- we'll get</p> <p>17 to that.</p> <p>18 Was there any dispensing or</p> <p>19 prescription data that went into the creation of</p> <p>20 this spreadsheet besides the retailer claims data?</p> <p>21 A I don't understand your question. I'm</p> <p>22 sorry.</p> <p>23 Q Was there any prescription data or</p> <p>24 dispensing data or any other data that went into the</p> <p>25 creation of this output file, besides what we talked</p>

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<p style="text-align: right;">Page 22</p> <p>1 about earlier, being the retailer claims data?</p> <p>2 A Well, how do you define prescription</p> <p>3 data versus claims data versus dispensing data? I'm</p> <p>4 not -- I'm not familiar with those -- those are not</p> <p>5 terms of art.</p> <p>6 Q Okay. That's -- that's fair. And</p> <p>7 that's a bad question. Thank you for pointing out a</p> <p>8 bad question.</p> <p>9 I'm just trying to figure out if</p> <p>10 there's any data that you used to generate this</p> <p>11 spreadsheet besides what we talked about, being</p> <p>12 retailer claims data?</p> <p>13 A So my understanding is that the</p> <p>14 retailers provided my staff a -- data on spending by</p> <p>15 consumers for the at-issue products by state, month</p> <p>16 and year, and product -- and product subcategory,</p> <p>17 really NDC code. And that they represented, the</p> <p>18 retailers, that the dispensing fee, which I think is</p> <p>19 what you've referred to by "dispensing data," was</p> <p>20 already taken out, as was the payment made by the</p> <p>21 third-party payor --</p> <p>22 Q Okay. I --</p> <p>23 A -- for the insured prescriptions.</p> <p>24 Q I think we're talking past each other,</p> <p>25 because my -- my question just relates to, are there</p>	<p style="text-align: right;">Page 24</p> <p>1 were dispensed.</p> <p>2 All we had was the information that</p> <p>3 was provided to us.</p> <p>4 BY MS. KAPKE:</p> <p>5 Q That's -- that's what I'm trying to --</p> <p>6 to make sure I understand.</p> <p>7 When you generated this output file,</p> <p>8 did you rely on anything other than what was</p> <p>9 provided to you?</p> <p>10 A We relied on the names and NDC codes</p> <p>11 and time periods of the at-issue valsartan and other</p> <p>12 products.</p> <p>13 Q Okay. And that -- that makes sense.</p> <p>14 Am I correct that this spreadsheet was</p> <p>15 created using the SAS software?</p> <p>16 THE COURT REPORTER: Using the what?</p> <p>17 MS. KAPKE: The SAS software.</p> <p>18 THE WITNESS: Do you mean SAS?</p> <p>19 BY MS. KAPKE:</p> <p>20 Q Yes.</p> <p>21 A I don't know. Bennett programs in SAS</p> <p>22 and in SETA. And also, as you can see, this is an</p> <p>23 Excel file. So he may have actually done this</p> <p>24 calculation in -- in Excel.</p> <p>25 Q I want to talk about the relevant time</p>
<p style="text-align: right;">Page 23</p> <p>1 any -- any prescriptions, any fills, any -- I'm not</p> <p>2 talking about individual fees. I'm just talking</p> <p>3 about to, generate this spreadsheet, did you use any</p> <p>4 type of document other than what's in the retailer</p> <p>5 claims data?</p> <p>6 THE COURT REPORTER: Did you use any</p> <p>7 other type of...</p> <p>8 MS. KAPKE: Document.</p> <p>9 THE WITNESS: I have -- honestly, I</p> <p>10 don't think I understand what you're saying at</p> <p>11 all. So retailer pharmacies are sitting on an</p> <p>12 incredible amount of data. So I think, you</p> <p>13 know, there's millions of transactions that are</p> <p>14 being done, all across the United States, every</p> <p>15 single day, dispensed drugs.</p> <p>16 What we were provided by the retailer</p> <p>17 pharmacies in this setting were very simple.</p> <p>18 There were co-insurance and co-payment,</p> <p>19 customer-paid amounts by product, manufacturer,</p> <p>20 month and year and state. They took out the</p> <p>21 dispensing fees, which are usually charged when</p> <p>22 a consumer goes and fills a prescription, and</p> <p>23 the retailer pharmacies also took out the</p> <p>24 payments that were made by the commercial</p> <p>25 insurers when these -- when these prescriptions</p>	<p style="text-align: right;">Page 25</p> <p>1 period used to generate this exhibit. It's my</p> <p>2 understanding, from your report, that you did not</p> <p>3 include any bills after the month of recall; is that</p> <p>4 correct?</p> <p>5 A After the final month of recall for</p> <p>6 each at-issue product. That's why the name of the</p> <p>7 manufacturer and the product name at the NDC code</p> <p>8 was so critical in our analysis. And what I already</p> <p>9 mentioned, we used -- we used the date. We used the</p> <p>10 month and year, plus the manufacturer and the</p> <p>11 product name for each of our assessments.</p> <p>12 Q And for bills of Hetero NDCs, you did</p> <p>13 not include any bills before May 2018, correct?</p> <p>14 A Correct. And we stopped at</p> <p>15 August 2018.</p> <p>16 Q Logistically, how did you filter out</p> <p>17 those dates? Was that something Bennett did?</p> <p>18 A Again, retail pharmacies provided the</p> <p>19 data to us by month and year for every single</p> <p>20 product and defined by NDC code, manufacturer and</p> <p>21 state. It was the month variable that was provided</p> <p>22 to us that allowed us to filter and confine it to</p> <p>23 the specific time periods.</p> <p>24 Again, pharmacies are -- in the</p> <p>25 United States, such as the ones listed here, are</p>

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1 that in the paragraph just referenced.
2 Q Yeah. Sorry about that.
3 A Let me just make sure I'm on the same
4 page with you.
5 Q It is on the screen now, if that's
6 helpful.
7 A Yeah. I prefer -- prefer the paper,
8 but thank you. So, right. And then there is a
9 footnote -- a footnote -- so there's a footnote that
10 ends that paragraph, which is 63. And that -- that
11 refers back to Footnote 3, as I mentioned in the
12 beginning of my report. And then in the beginning
13 of my report, I reference the complaint, and then go
14 onto reference the at-issue products.
15 Q And --
16 A Excuse me. And their time period.
17 Q And -- and my question is, are the
18 relevant time periods the same for paragraphs 60 and
19 63?
20 A Yes. The time periods relate to the
21 sale of prescription drugs from the relevant
22 manufacturers in the relevant time period as
23 enumerated in Footnote 3 and discussed in the
24 complaint. I do not make a distinction between
25 manufacturer and retailer.

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1 Q Got it.
2 MS. KAPKE: Okay. I want to go back
3 to Conti Exhibit 7, the output file.
4 BY MS. KAPKE:
5 Q I think I understand what each of
6 these columns represent, but I just want to go
7 through and double check that my understanding is
8 correct.
9 So Column A is going to represent the
10 retail pharmacy defendants in this case, correct?
11 A That's what is listed, sure.
12 Q Okay. And then Column B will
13 represent the manufacturer defendants at-issue in
14 the case, which you identified through the NDC code,
15 correct?
16 A Well, it's -- it's listed from this
17 FDA recall list, the manufacturer.
18 Q Okay. To -- when you were processing
19 the retailer claims data to create this output file,
20 did you exclude any prescription fills in the
21 retailer claims data based on NDC codes?
22 A Yes, I already discussed this
23 yesterday. There were some -- we -- I was provided,
24 from attorneys, the list of manufacturers and NDC
25 codes from the FDA recall list, and then some of the

<p style="text-align: right;">Page 30</p> <p>1 NDCs were also -- that were at-issue, were</p> <p>2 repackaged, relabeled or privately labeled by</p> <p>3 manufacturers downstream. That happens actually</p> <p>4 quite frequently in the -- in the U.S. market. We</p> <p>5 picked up those NDC codes and included them here.</p> <p>6 Q Did you exclude any prescription</p> <p>7 fills?</p> <p>8 A We didn't have prescription fill data.</p> <p>9 You did not -- that's not what you gave us. We had</p> <p>10 aggregate sales to specific consumers, paid by</p> <p>11 co-pays and co-insurance. Fills are much larger --</p> <p>12 or contain a lot more information, but you did not</p> <p>13 provide that information. Fills, again, provide the</p> <p>14 dispensing fee, whether or not the individual used</p> <p>15 their insurance to pay for a portion or the entirety</p> <p>16 of the prescription, the date, the time, of the</p> <p>17 dispensing. It could include the -- the name of the</p> <p>18 customer, their address, and on and on. We</p> <p>19 didn't -- we didn't have that aggregate of data.</p> <p>20 You did not provide that to us.</p> <p>21 Q How much time did you spend looking at</p> <p>22 the actual retailer claims data?</p> <p>23 A I spent some time with my staff.</p> <p>24 Q What does that mean?</p> <p>25 A I spent some time with my staff.</p>	<p style="text-align: right;">Page 32</p> <p>1 issue, correct?</p> <p>2 A It lists the state.</p> <p>3 Q Correct. And your report, at</p> <p>4 paragraph 78 --</p> <p>5 MS. KAPKE: And we can go --</p> <p>6 THE WITNESS: Hold on. Hold on,</p> <p>7 paragraph 78.</p> <p>8 MS. KAPKE: -- to that.</p> <p>9 THE WITNESS: Paragraph 78. Okay.</p> <p>10 Just give me a second to read. Okay.</p> <p>11 BY MS. KAPKE:</p> <p>12 Q It discusses how you used the state in</p> <p>13 which the retail pharmacy was located for -- I</p> <p>14 assume you're talking about physical brick and</p> <p>15 mortar stores at that -- at that point, correct?</p> <p>16 A I'm assuming.</p> <p>17 Q And then for mail order pharmacy</p> <p>18 claims, you used the state where the prescription</p> <p>19 was mailed. Does that mean the state where the</p> <p>20 prescription was mailed to or where it was mailed</p> <p>21 from?</p> <p>22 A It was mailed to because, again,</p> <p>23 injury occurs at the point of sale. So for retail</p> <p>24 pharmacies, the dispensed prescription is the</p> <p>25 location of the injury. And for mail order, it's</p>
<p style="text-align: right;">Page 31</p> <p>1 Q What does "some time" mean?</p> <p>2 A I spent some time over the course of</p> <p>3 the time that I was working on this case. In</p> <p>4 addition, I spoke with my staff on a regular basis</p> <p>5 about the analysis that they were doing at my</p> <p>6 direction.</p> <p>7 Q Did you --</p> <p>8 A That's kind of the normal course of</p> <p>9 doing research and also working on these cases, is</p> <p>10 that we look at data that was provided. We clean</p> <p>11 and double check the completion of the data. We</p> <p>12 look to see what fields are provided. We look to</p> <p>13 see what fields were not provided that we would</p> <p>14 expect to provide -- to be provided. We do some</p> <p>15 double checks to make sure there's not missing data,</p> <p>16 and if there is missing data, how do we think about</p> <p>17 that, and on and on. That's all part of the process</p> <p>18 of doing the work that I do every day.</p> <p>19 Q Did you, yourself, ever open an actual</p> <p>20 spreadsheet in the retailer claims data?</p> <p>21 A No, but Bennett and the rest of my</p> <p>22 staff opened it. And we discussed it at length and</p> <p>23 multiple times -- and over multiple times, over the</p> <p>24 time period of this analysis.</p> <p>25 Q Column C of Exhibit 7 is the state at</p>	<p style="text-align: right;">Page 33</p> <p>1 the -- where the -- the prescription was mailed to.</p> <p>2 Q How did you and your staff group</p> <p>3 particular fills to particular states to derive that</p> <p>4 output file?</p> <p>5 A It is contained -- the state is</p> <p>6 contained in the information -- in the information</p> <p>7 that the retailers provided to us.</p> <p>8 Q What did you or your staff do when the</p> <p>9 Excel spreadsheet and the retailer claims data left</p> <p>10 the state field blank?</p> <p>11 A I don't recall. And I don't know</p> <p>12 the -- the occurrence of that. Again, I'm more than</p> <p>13 happy to check with my staff.</p> <p>14 Q Well, today is my -- my opportunity to</p> <p>15 depose you about the contents of your report. So</p> <p>16 what did you or your staff do when an Excel</p> <p>17 spreadsheet in the retailer claims data used a</p> <p>18 question mark in the state field?</p> <p>19 A I'm not aware that that was -- yeah,</p> <p>20 I'm not aware that that was -- that occurred at all.</p> <p>21 Q Same question if an abbreviation "AA"</p> <p>22 was used in the state field?</p> <p>23 A Again, I'm not aware that that</p> <p>24 occurred at all or at what frequency it occurred.</p> <p>25 If it did, my assumption is that --</p>

<p style="text-align: right;">Page 34</p> <p>1 THE THE COURT REPORTER: Is that what?</p> <p>2 THE WITNESS: That it was excluded,</p> <p>3 those scripts were excluded.</p> <p>4 BY MS. KAPKE:</p> <p>5 Q Does the abbreviation "AA" mean</p> <p>6 anything to you?</p> <p>7 A It does not, and I've never</p> <p>8 encountered it in any of the research work I've</p> <p>9 done.</p> <p>10 Q How about the abbreviation "AE"?</p> <p>11 A Same. But, again, I suspect that</p> <p>12 those were excluded for my analysis. Without a</p> <p>13 state attribution that actually means something, I</p> <p>14 don't -- I wouldn't feel comfortable including that</p> <p>15 information. I'm a little Type A about data</p> <p>16 analysis, as you probably have -- have surmised.</p> <p>17 MS. KAPKE: I want to go back to</p> <p>18 Exhibit 7.</p> <p>19 BY MS. KAPKE:</p> <p>20 Q Column D is the product name. That --</p> <p>21 the product name is just derived from the NDC --</p> <p>22 A I -- I don't know what you're talking</p> <p>23 about, and you have --</p> <p>24 Q Yeah.</p> <p>25 A Okay. Thank you.</p>	<p style="text-align: right;">Page 36</p> <p>1 was appropriate -- strike that.</p> <p>2 I want to go back and talk about when</p> <p>3 you included fills.</p> <p>4 A I don't know what you mean by "fills,"</p> <p>5 ma'am.</p> <p>6 Q Okay. That's -- that's fair. Thank</p> <p>7 you for -- for clarifying that. Did you -- I'll</p> <p>8 strike that and ask a different question.</p> <p>9 Did you ask plaintiffs' counsel</p> <p>10 whether it was appropriate to assume that the data</p> <p>11 in -- provided by the retail pharmacy defendants in</p> <p>12 the retailer claims data were actually filled at one</p> <p>13 of the defendant pharmacies?</p> <p>14 A I don't understand your question. I'm</p> <p>15 sorry.</p> <p>16 Q Did you ask plaintiffs' counsel --</p> <p>17 I'll ask it again.</p> <p>18 Did you ask plaintiffs' counsel about</p> <p>19 any limitations in the retailer claims data?</p> <p>20 A I mean, there are significant</p> <p>21 limitations in the claims data that was provided to</p> <p>22 me. So again, dispensing fees were not included.</p> <p>23 Nor were the payments made by the insurer. Nor were</p> <p>24 any information provided about whether or not these</p> <p>25 patients were insured at all. Nor was any</p>
<p style="text-align: right;">Page 35</p> <p>1 So I'm sorry. This is -- I'm sorry.</p> <p>2 I didn't hear the last -- is that -- was that a</p> <p>3 question or a statement?</p> <p>4 Q I'm just asking you to confirm that</p> <p>5 the product name is derived from the NDC code.</p> <p>6 A Yes.</p> <p>7 Q Okay. And then I want to talk about</p> <p>8 Column E, the customer impact column.</p> <p>9 A That's not what it says, ma'am.</p> <p>10 Q Oh, I'm sorry. Consumer. My -- my</p> <p>11 apologies. Thank you.</p> <p>12 The consumer impact column. To derive</p> <p>13 that, you would total the full patient paid amount</p> <p>14 for each qualifying prescription for the particular</p> <p>15 retailer, manufacturer, state and script; is that</p> <p>16 correct?</p> <p>17 A Correct. And year -- and -- and time.</p> <p>18 Q And relevant time period. And that is</p> <p>19 just simple addition, correct?</p> <p>20 A So it's aggregated over quantity and</p> <p>21 paid amount.</p> <p>22 Q The -- there's -- the aggregation is</p> <p>23 just adding numbers up, correct?</p> <p>24 A Well, it's -- sure.</p> <p>25 Q Okay. I want to go back to when it</p>	<p style="text-align: right;">Page 37</p> <p>1 other -- I mean, there's -- again, retail pharmacies</p> <p>2 are sitting on tons of data that they collect when</p> <p>3 they're dispensing prescriptions. We were provided</p> <p>4 very limited data, considering the universe of data</p> <p>5 that they have registered and are required to have</p> <p>6 when they're dispensing prescription drugs in the</p> <p>7 U.S. chain.</p> <p>8 Q Did you ask plaintiffs' counsel to ask</p> <p>9 for additional data?</p> <p>10 A We had discussions about what</p> <p>11 was -- what was the data that we wanted very early</p> <p>12 on in this case, given the theories of liability and</p> <p>13 damage, which included some of the information that</p> <p>14 I provided -- I enumerated to you.</p> <p>15 Q Did you ask plaintiffs' counsel to</p> <p>16 confirm to you that the data produced by the retail</p> <p>17 pharmacy defendants in the retailer claims data only</p> <p>18 reflected prescriptions that were actually filled at</p> <p>19 a defendant pharmacy?</p> <p>20 A That was always represented to us as</p> <p>21 being provided by the retail pharmacies, that they</p> <p>22 were actually dispensed prescriptions.</p> <p>23 Q And when you say --</p> <p>24 A For the at-issue drugs in the at-issue</p> <p>25 time periods by the at-issue manufacturers. Again,</p>

<p style="text-align: right;">Page 38</p> <p>1 the retail pharmacies provided this information to</p> <p>2 us. They are sitting on much more information that</p> <p>3 was not provided to us. They did this cut of the</p> <p>4 data, and we had to live with the cut that they</p> <p>5 were -- they provided to us.</p> <p>6 Q When you say that was all that was</p> <p>7 represented to us, who is the "us" in that sentence?</p> <p>8 A Myself and my staff.</p> <p>9 MS. WHITELEY: Objection. Counsel, to</p> <p>10 the extent that you're asking for</p> <p>11 attorney/client privileged information and work</p> <p>12 product information, we're objecting to that.</p> <p>13 The witness may answer.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 Myself and my staff.</p> <p>16 BY MS. KAPKE:</p> <p>17 Q So who made that representation to</p> <p>18 you? Was that -- and I -- I don't want to get into</p> <p>19 privileged communication, but it is an assumption</p> <p>20 under proving your opinion. So I want to confirm</p> <p>21 whether that's an assumption that you got from</p> <p>22 plaintiffs' counsel or if there's some document that</p> <p>23 you read from -- from the retail pharmacy defendants</p> <p>24 that confirms that.</p> <p>25 A I think we have already established</p>	<p style="text-align: right;">Page 40</p> <p>1 the date, timestamp of when that prescription</p> <p>2 is actually dispensed to the consumer, there is</p> <p>3 the dispensing fee. And -- and many other --</p> <p>4 there's the name of the prescribing physician</p> <p>5 and their -- usually their national prescriber</p> <p>6 ID number, and on and on.</p> <p>7 We were not provided that data, myself</p> <p>8 and my staff.</p> <p>9 The -- my understanding is that the</p> <p>10 retail pharmacies provided a very limited view</p> <p>11 of the data that they have access to, that was</p> <p>12 related, as we have already discussed, to</p> <p>13 the -- the manufacturer name; the product name,</p> <p>14 including the NDC code, the month, year and</p> <p>15 state, and whether -- and whether and how much</p> <p>16 the consumer paid out-of-pocket as a function</p> <p>17 of co-insurance or co-payment analysis.</p> <p>18 That's all we were provided out of</p> <p>19 this universe of much more data that they must</p> <p>20 collect for every single dispensed prescription</p> <p>21 in America.</p> <p>22 BY MS. KAPKE:</p> <p>23 Q Were you aware of whether the retailer</p> <p>24 claims data included information from PBMs?</p> <p>25 A What do you mean by that?</p>
<p style="text-align: right;">Page 39</p> <p>1 this, ma'am.</p> <p>2 Q I -- then -- then answer the question</p> <p>3 again. I don't -- I don't know the answer.</p> <p>4 A I don't understand your question that</p> <p>5 you just asked, frankly. It was a multiple,</p> <p>6 compound question.</p> <p>7 Q Okay. Did plaintiffs' counsel tell</p> <p>8 you to assume that the retailer claims data only</p> <p>9 included prescriptions that were actually filled at</p> <p>10 a defendant pharmacy?</p> <p>11 MS. WHITELEY: Same objection.</p> <p>12 You may answer.</p> <p>13 THE WITNESS: I don't understand your</p> <p>14 question, ma'am. I -- I know a lot about the</p> <p>15 data that retail pharmacies generate when they</p> <p>16 are dispensing a prescription. There is a ton</p> <p>17 of data that is generated, as I have already</p> <p>18 alluded to.</p> <p>19 There's the name of the consumer.</p> <p>20 There's their address. There's their telephone</p> <p>21 number. There is whether or not that</p> <p>22 prescription is insured and by whom, by what</p> <p>23 insurer. Then there is the claim amount, and</p> <p>24 then there is the paid amount.</p> <p>25 And there's other information as well;</p>	<p style="text-align: right;">Page 41</p> <p>1 Q I'm asking if, to your knowledge, the</p> <p>2 retailer claims data includes PBM customer data?</p> <p>3 A What is PBM customer data? Who is the</p> <p>4 customer -- I mean, the consumer -- the patient is</p> <p>5 the customer, right? They're the person who's</p> <p>6 dispensed the prescription. They're the customer of</p> <p>7 the pharmacy. What is PBM customer data?</p> <p>8 Q Do you understand that there</p> <p>9 are -- I'll -- I'll ask a different question.</p> <p>10 Did the data you were provided include</p> <p>11 prescriptions dispensed from pharmacies other than</p> <p>12 the pharmacies who are defendants in this case?</p> <p>13 A I'm not sure I'm following your</p> <p>14 question. I'm sorry.</p> <p>15 Q So the retailer claims data has --</p> <p>16 A Right.</p> <p>17 Q -- has data from -- that -- that</p> <p>18 reflects prescription fills at those defendant</p> <p>19 pharmacies, CVS, Rite Aid, other -- other defendant</p> <p>20 pharmacies. Are you with me there?</p> <p>21 A I don't know -- I don't know what you</p> <p>22 mean by "other defendant pharmacies." The data that</p> <p>23 I have are the -- are the retailer pharmacies that</p> <p>24 we reviewed when we first started talking. They're</p> <p>25 listed in my Attachment B, right? We established</p>

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<p style="text-align: right;">Page 42</p> <p>1 that those were the ones that were provided to me.</p> <p>2 Q Right.</p> <p>3 A I'm happy to go through them again.</p> <p>4 So there's Albertsons, CVS, Kroger, Optum,</p> <p>5 Express Scripts, Walgreens and Walmart.</p> <p>6 Q Correct. Does the data in -- in the</p> <p>7 retailer claims data contain information about</p> <p>8 prescriptions dispensed from pharmacies who are not</p> <p>9 defendants in this case?</p> <p>10 A Are you asking me whether Albertsons</p> <p>11 gave me data from non-Albertsons pharmacies?</p> <p>12 Q In general, yes.</p> <p>13 A I don't understand the question. I</p> <p>14 don't understand -- I don't understand how</p> <p>15 Albertsons would have data from CVS or CVS would</p> <p>16 have data from Walmart or Walgreens.</p> <p>17 Q Okay.</p> <p>18 A I -- I mean, you know, I -- I don't</p> <p>19 understand that. I'm sorry.</p> <p>20 Q Okay. So --</p> <p>21 A These are massive public companies. I</p> <p>22 don't see how they would have access to other public</p> <p>23 companies' dispensing data at the level of</p> <p>24 aggregation that we were provided.</p> <p>25 Q Are you aware of the concept in the</p>	<p style="text-align: right;">Page 44</p> <p>1 provided to me.</p> <p>2 Q I want to move now to how you used</p> <p>3 Conti Exhibit 7, what you did with it.</p> <p>4 Am I correct that the retailer damages</p> <p>5 output file is the basis of the calculations that</p> <p>6 are listed for the retail pharmacy defendants in</p> <p>7 Attachments G, H and I of your report?</p> <p>8 A It's the output file that corresponds</p> <p>9 to the exhibits.</p> <p>10 Q Okay. So let's -- let's go through</p> <p>11 the --</p> <p>12 A It's not -- it's not the native data,</p> <p>13 right?</p> <p>14 Q Correct.</p> <p>15 A And it's not the -- it's not the --</p> <p>16 it's aggregated.</p> <p>17 Q Correct.</p> <p>18 Okay. So let's -- I want to go</p> <p>19 through Attachment -- Attachments G, H and I. So</p> <p>20 let's take a look at G.1.</p> <p>21 A G.1.</p> <p>22 Q This the state grouping file --</p> <p>23 A Just one second. Just one second,</p> <p>24 please. I'm not there yet. Okay. G.1, okay.</p> <p>25 Q That's the state grouping file</p>
<p style="text-align: right;">Page 43</p> <p>1 pharmaceutical industry of a data sale from one</p> <p>2 pharmacy to another?</p> <p>3 A No.</p> <p>4 Q Did you consider whether any of the</p> <p>5 retailer claims data included within it included</p> <p>6 prescription fills from non-defendant pharmacies</p> <p>7 that subsequently sold their consumer data to one of</p> <p>8 the defendant pharmacies?</p> <p>9 A I -- I'm sorry. They may do that for</p> <p>10 intelligence purposes, but I am not aware that that</p> <p>11 is the data that was provided.</p> <p>12 We were provided transaction data at</p> <p>13 the pharmacy level. Each pharmacy has a pharmacy</p> <p>14 identifier. It's standard. It's actually required</p> <p>15 to be reported and kept by the regulators. And so</p> <p>16 I'm assuming that the data that was provided, at</p> <p>17 least the native format of the data, has that</p> <p>18 pharmacy ID.</p> <p>19 But, again, if the retail pharmacies</p> <p>20 that -- were the ones who provided the data in the</p> <p>21 form that they gave it to me, if they did not -- if</p> <p>22 they mistakenly did not include their own pharmacy</p> <p>23 ID or accurately counted their own pharmacy ID in</p> <p>24 the data they had, that's upstream of -- there's no</p> <p>25 way that I could check that in the data that was</p>	<p style="text-align: right;">Page 45</p> <p>1 provided to you by plaintiffs' counsel, correct?</p> <p>2 THE COURT REPORTER: I'm sorry, was</p> <p>3 there an answer?</p> <p>4 THE WITNESS: I said correct.</p> <p>5 BY MS. KAPKE:</p> <p>6 Q And you have no opinion on whether</p> <p>7 these groupings are accurate, correct?</p> <p>8 A What do you mean by "accurate"?</p> <p>9 MR. HONIK: Object to form and to the</p> <p>10 extent it calls for a legal conclusion.</p> <p>11 Good morning, Kara. I apologize for</p> <p>12 joining late.</p> <p>13 MS. KAPKE: No -- no worries.</p> <p>14 BY MS. KAPKE:</p> <p>15 Q And I just want to make sure that</p> <p>16 these groupings aren't a reflection of a legal</p> <p>17 conclusion on your part. They're just information</p> <p>18 and assumptions given to you by plaintiffs' counsel,</p> <p>19 correct?</p> <p>20 MR. HONIK: Thank you.</p> <p>21 THE WITNESS: So in the notes of</p> <p>22 Attachment G-1 -- please scroll down to the</p> <p>23 next page. It states very clearly, "Retailer</p> <p>24 Implied Warranty Table, provided by counsel."</p> <p>25</p>

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<p style="text-align: right;">Page 46</p> <p>1 BY MS. KAPKE: 2 Q Right. I -- I understand that it was 3 provided to you by counsel. And I just want to 4 confirm that that also means that these groupings 5 are not a reflection of any opinions that you have 6 regarding liability or state laws or legal 7 ramifications? 8 MR. HONIK: Object to form. 9 THE WITNESS: I'm an economist and 10 expert on the pharmaceutical industry. I'm not 11 a lawyer. I don't have an opinion about these 12 groupings. They were provided to me by 13 counsel. I think we've established that. 14 BY MS. KAPKE: 15 Q Okay. And the same is true for 16 Attachment H.1 and I.1 as well? 17 A Let's look. So if you go to the next 18 page in H.1, same thing noted, "Retailer Consumer 19 Protection Act Claims Table, provided by counsel." 20 Q So the answer to my question is yes, 21 you don't have an opinion about these groupings -- 22 A Actually, you didn't ask me a 23 question. Again, this information was provided to 24 me by counsel. I don't have a legal opinion. I'm 25 not a lawyer.</p>	<p style="text-align: right;">Page 48</p> <p>1 It's -- it's explained. So in paragraphs 63 and 64, 2 I explain what I did for the defendant retailers for 3 unjust enrichment. I list, "Retailers profited from 4 the sale of at-issue valsartan products to consumers 5 at the point of sale. Profits are defined as 6 revenues minus cost for each at-issue valsartan 7 product sold by the defendant retailers from 8 January 1st until the at-issue valsartan products 9 were recalled in 2018 and 2019 for being adulterated 10 and misbranded." 11 I then have, again, a footnote where 12 we have established which of the products at-issue 13 and at what time periods. All I did was take the 14 information that was provided to me by the at-issue 15 retailers for the relevant time periods, the 16 relevant manufacturers and the relevant product 17 categories, and matched them with the states 18 relevant for the unjust enrichment damages and 19 summed them up. 20 I did the exact same thing for the 21 liability claims, and I think that is listed and 22 explained in my report, in the preceding section, in 23 Paragraphs 60, 61 and 62. 24 Q And what I'm trying to -- to 25 understand and make sure that I -- I follow, is what</p>
<p style="text-align: right;">Page 47</p> <p>1 Q Okay. So -- 2 A And then you asked me for another 3 attachment, H.1. And then which other table? 4 Q I.1. 5 A I.1. So I.1, again, has the same 6 note, "Retailer Unjust Enrichment Table, provided by 7 counsel." 8 Q So the same caveat as you made before, 9 that you don't have a legal opinion, you're not a 10 lawyer, would also apply to I.1, correct? 11 A It's not a caveat. You asked me a 12 question, do I have a legal opinion. And I'm saying 13 I'm an economist. I'm not a lawyer. I don't have 14 an opinion on liability other than -- or the 15 inclusion, other than what was provided to me by 16 counsel to calculate. 17 Q Right. Okay. So what I want to do is 18 make sure that I understand how you derived the 19 remainder of the Attachments to G, H and I. And 20 what I think you did to create the remainder of 21 those attachments is simply sum up the totals for 22 the relevant state and retailer found within 23 Conti Exhibit 7 where called for, according to 24 attachment G.1, H.1 or I.1.; is that correct? 25 A Let's go back to my report and assess.</p>	<p style="text-align: right;">Page 49</p> <p>1 you're doing is you're basically sorting and 2 filtering on the Excel spreadsheet that is 3 Conti Exhibit 7, correct? 4 MR. HONIK: Object to the form. 5 THE WITNESS: Okay. So it's probably 6 easiest just to go back to the paragraph where 7 I explained the procedure again. It's in 8 paragraph 78 under, "Defendant Retailer 9 Liability Damages and Unjust Enrichment 10 Damages." 11 So in the paragraph, I explain what we 12 did. To calculate defendant retailer theory of 13 liability damages and unjust enrichment 14 damages, I rely upon the defendant retailer 15 pharmacy claims data. These claims datasets 16 have been limited to the consumer paid amounts. 17 That is, they exclude the all third-party payor 18 amounts, and thus represent the revenues 19 described in the section previous. I already 20 provided that information. 21 The consumer paid amounts in the 22 defendant retailer pharmacy claim datasets 23 provided to me do not include data on 24 dispensing fees, nor any of the other 25 information that I already discussed as</p>

<p style="text-align: right;">Page 50</p> <p>1 potentially relevant but not -- again, that 2 they have but was not provided to me. 3 Therefore, I don't subtract page 4 dispensing fees to offset the cost of the 5 retailer pharmacies dispensing these products 6 to consumers. This offset has already been 7 done by the defendant retailer. For each set 8 of defendant retailer pharmacy claims, I limit 9 the claims to the at-issue valsartan product 10 NDC codes found in the IQVIA dataset and 11 provided to me by counsel. 12 I then sum the total consumer paid 13 amounts by product, defendant retailer and 14 state. When there is a difference for retail 15 pharmacy claims, I use the state in which the 16 retailer pharmacy was located. For mail order 17 pharmacy claims, I use the state where the 18 prescription was mailed. 19 I then -- and then all I did was match 20 that to the states at issue for the specific 21 theory of liability, whether it be liability 1, 22 2 or unjust enrichment claims. And all they 23 are varying by is the states that are included 24 in that. It's exactly the same procedure. 25</p>	<p style="text-align: right;">Page 52</p> <p>1 data that might be -- the data that was -- that 2 underlies each one of those steps. 3 Q Is there anything that you just talked 4 about with manufacturer NDC groupings, or the 5 instructions in your report, that is not contained 6 already in Exhibit 7? 7 MR. HONIK: Object to form. 8 THE WITNESS: I'm sorry. What's 9 Exhibit 7? 10 BY MS. KAPKE: 11 Q The output file. 12 A There's -- that data is -- there's 13 underlying data underneath that that you would 14 probably need. 15 Q What data would you need underlying 16 the output file to create new Attachments G, H and I 17 if you were given new states at issue? 18 A You would need the data that you, the 19 retailers, provided to me. 20 Q Why? Why isn't that already addressed 21 in your output file? 22 MR. HONIK: Object to form. 23 THE WITNESS: I'm not following your 24 question. I'm sorry. 25</p>
<p style="text-align: right;">Page 51</p> <p>1 Q And I -- I appreciate that you're 2 trying to be helpful, but you don't need to -- to 3 read the report. What -- what I'm -- what I'm 4 trying to -- to understand is if the state groupings 5 were to change, if plaintiffs gave you a different 6 version of G.1, H.1 or I.1 with different state 7 groupings, would we need your expertise to create a 8 subsequent version of attachments G, H and I, or 9 could we do that based on what you already gave us 10 with the Conti Exhibit 7, the output file, and 11 simply sort, filter, and subtotal to create new 12 Attachments G, H and I? 13 A So my method is flexible to 14 accommodate other -- other assumptions, that 15 inclusion or exclusions of states. I think you 16 would have to go back to the data that was provided 17 to me by the retailer pharmacies and the 18 manufacturer NDC groupings where we picked up -- 19 remember, I mentioned we picked up repackager and -- 20 and private label drugs that have recast or 21 relabeled NDC codes in order to make that 22 calculation. 23 But any trained analyst could -- could 24 do that calculation, following the -- following the 25 instructions that are provided in my report and the</p>	<p style="text-align: right;">Page 53</p> <p>1 BY MS. KAPKE: 2 Q What I'm trying to understand is 3 say -- say we took out -- you know, we changed two 4 states in Attachment G, G.1. Why can't I go to 5 the -- the output file and just do a sort and filter 6 and then create new numbers? What -- what data are 7 you using? 8 I don't think you're using anything. 9 I think it's a simple sort and filter. And so 10 that's what I'm trying to understand. Is there 11 something you are doing or can -- can anyone do -- 12 do it once you have the output file? 13 MR. HONIK: Object to form, asked and 14 answered. 15 THE WITNESS: So, Ms. Kapke, I don't 16 feel comfortable with the idea that you just 17 sort and filter. That's not what good data 18 analysts do. They build that -- if you're 19 going to redo the calculations to -- based 20 on -- on other assumptions, good data practices 21 is to go back to the original dataset, ensure 22 the data is complete, doesn't contain any 23 mistakes, and then go through the steps again 24 to get to the calculation that's at issue. 25 I told you that the steps that we went</p>

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<p style="text-align: right;">Page 54</p> <p>1 through are listed in my report. They're very 2 clear, and they're very simple. And so any 3 analyst, who is well trained, should be able to 4 follow the steps if the states change, if the 5 NDC codes change, if there are additional 6 calculations that need to get done. 7 I would never tell, even, like, my 8 undergrads where the IT stats are to, to just 9 sort and filter to get the right -- to get a 10 different data. That is bad data management 11 practice. You go back to the original data and 12 you would calculate it. 13 BY MS. KAPKE: 14 Q Okay. I'm going to move on to -- 15 THE WITNESS: So actually, I'd like to 16 take a break, please. So can I have 17 five minutes? 18 MS. KAPKE: Sure. 19 MR. HONIK: Let's resume at 10:20. 20 THE VIDEOGRAPHER: The time is 10:14. 21 This ends Media Unit Number 1. We're off the 22 record. 23 (Whereupon, a short break was taken.) 24 THE VIDEOGRAPHER: The time is 10:22. 25 This begins Media Unit Number 2. We're back on</p>	<p style="text-align: right;">Page 56</p> <p>1 And I -- I think I get it, but I'm -- 2 I want to make sure that I do. So I want to use an 3 example to make sure that I understand. And -- and 4 if I get my example wrong, you can correct me. 5 So do you recall -- 6 A Wait. Hold on. I just want to make 7 sure that I understand. So are we focused on the 8 retailer damages, or are we focused on Table 1 where 9 the manufacturer damages is? 10 Q I'm going to give you an example 11 that's focused on the retailer examples. 12 A Okay. Table 2 and 3, correct? 13 Q Yeah. I'm looking specifically at -- 14 the attachment is what I want to look at. So what I 15 want to look at is -- let's say consumer protection 16 damages for CVS for Arizona. So that's in 17 Table H.2. 18 A Wait. Hold on. So -- so I'm on 19 Table 2 where we talk about deduplication 20 and -- okay. So -- 21 Q I want you to go to Attachment H.2. 22 A H.2, okay. 23 Q And you've got a calculation there for 24 consumer protection damages for CVS for Arizona -- I 25 just picked a state at random -- for [REDACTED]</p>
<p style="text-align: right;">Page 55</p> <p>1 the record. 2 BY MS. KAPKE: 3 Q Dr. Conti, during the break, did you 4 talk to any of your staff? 5 A No. 6 Q Okay. So I'm going to ask you about 7 what you were saying regarding deduplication of 8 damages in your report. I think I understand, but I 9 want to use an example to make sure that I'm -- I'm 10 following what you're saying. So let's look -- 11 A Can you -- can you direct me -- can 12 you direct me to where in my report you're focused 13 on? 14 Q Sure. 15 So in your summary of damages in 16 paragraph 79, you say, "I present deduplicated 17 aggregate damages." And I'm just focused on the 18 word "deduplicated." 19 A I don't see the -- that in paragraph 20 79. Hold on. You mean in reference to Table 1 and 21 then in reference to Table 2 and 3? 22 Q Yes. 23 A There are two footnotes and one 24 paragraph where deduplication is referred to. 25 Q Right. I understand.</p>	<p style="text-align: right;">Page 57</p> <p>1 right? 2 A I see that. 3 Q Okay. And -- and that is the sum 4 total, equal to the full patient paid amount, for 5 the at-issue valsartan for the relevant time period 6 as reflected in the retailer claims data produced by 7 CVS, correct? 8 A Under this period of damage, correct. 9 Q Okay. 10 A And for all of the included -- 11 THE COURT REPORTER: I'm sorry? 12 THE WITNESS: And for all of the 13 included NDC codes and manufacturers at-issue 14 in the relevant time period. 15 BY MS. KAPKE: 16 Q Got it. We're on the same page here. 17 This shouldn't be controversial, I don't think. I 18 just want to make sure that I understand. 19 A I just want to -- I just want to make 20 sure that I understand what you're saying because 21 there's clearly been some mismatch in the language 22 that you're using as opposed to what I understand is 23 this data or these analyses. 24 Q And please. Please always -- 25 that's -- that's one of the first things that</p>

15 (Pages 54 - 57)

<p style="text-align: right;">Page 58</p> <p>1 Mr. Goldberg told you yesterday, was if you don't</p> <p>2 understand a question, let us know. And -- and we</p> <p>3 definitely want that.</p> <p>4 So let's go to Attachment I.2, which</p> <p>5 is the unjust enrichment calculations. And the</p> <p>6 total is the exact same for CVS for Arizona on</p> <p>7 unjust enrichment calculations, correct?</p> <p>8 A For Arizona, yes.</p> <p>9 Q So when you talk about total damages</p> <p>10 across defendant manufacturers and retailers not</p> <p>11 being intended to be summed, you're not intending</p> <p>12 for anyone to sum both consumer protection damages</p> <p>13 and unjust enrichment damages for Arizona or CVS; is</p> <p>14 that correct?</p> <p>15 MR. HONIK: Note my objection to the</p> <p>16 extent it calls for a legal conclusion.</p> <p>17 But you may answer.</p> <p>18 THE WITNESS: So, the -- the -- that's</p> <p>19 why I referred to Table 2 and Table 3, if we</p> <p>20 could go back and explain the deduplication.</p> <p>21 Right. So the liability damages per state and</p> <p>22 per manufacturer are deduplicated.</p> <p>23 So what I mean by that is, if the</p> <p>24 liability damages were calculated for one</p> <p>25 state, let's just say Arizona, in one theory of</p>	<p style="text-align: right;">Page 60</p> <p>1 conclusion.</p> <p>2 You may answer.</p> <p>3 THE WITNESS: Thank you.</p> <p>4 Allocation and apportionment is</p> <p>5 outside of the scope of my report.</p> <p>6 BY MS. KAPKE:</p> <p>7 Q You would agree that they reflect the</p> <p>8 same -- for a particular state and particular</p> <p>9 manufacturer, they represent the same data which is</p> <p>10 the full patient paid amount, correct?</p> <p>11 MR. HONIK: Object to the form.</p> <p>12 THE WITNESS: I disagree with that</p> <p>13 characterization.</p> <p>14 BY MS. KAPKE:</p> <p>15 Q Correct it then, please.</p> <p>16 MR. HONIK: Object to form.</p> <p>17 You can answer.</p> <p>18 THE WITNESS: Okay. So let's go back</p> <p>19 to the basis of liability versus unjust</p> <p>20 enrichment.</p> <p>21 Liability is related to what was paid</p> <p>22 at the point of sale. In this case, by the --</p> <p>23 by the consumer and TPP, if we're taking this</p> <p>24 from a theoretical perspective. And so the</p> <p>25 full amount of retailer liability is the -- the</p>
<p style="text-align: right;">Page 59</p> <p>1 liability, and then calculated for another --</p> <p>2 for exactly the same state, for another theory</p> <p>3 of liability for retailers, they were only</p> <p>4 counted once in Table 2.</p> <p>5 The unjust enrichment damages are a</p> <p>6 separate calculation for every relevant state</p> <p>7 manufacturer NDC code finding. So you're</p> <p>8 actually comparing apples to oranges. The</p> <p>9 unjust enrichment tables are their own thing.</p> <p>10 And they are listed under Table 3.</p> <p>11 Deduplication is referring to the liability</p> <p>12 claims, and they are listed in Table 2. That's</p> <p>13 why the deduplication note is referencing</p> <p>14 Table 2, not Table 3.</p> <p>15 BY MS. KAPKE:</p> <p>16 Q Are you giving an opinion that a</p> <p>17 consumer plaintiff would be entitled to unjust</p> <p>18 enrichment and liability damages from a retail</p> <p>19 pharmacy defendant for a particular state?</p> <p>20 THE COURT REPORTER: I'm sorry. Can</p> <p>21 I -- can I hear the end of the question,</p> <p>22 please?</p> <p>23 MS. KAPKE: For a particular state.</p> <p>24 MR. HONIK: Note my objection to the</p> <p>25 extent it requires a legal expert opinion or</p>	<p style="text-align: right;">Page 61</p> <p>1 full amount that -- that was paid by the</p> <p>2 consumer and by the third-party payor at the</p> <p>3 point of sale, and does not include offsets</p> <p>4 such as rebates or discounts that might have</p> <p>5 been applied later.</p> <p>6 Whereas unjust enrichment, if you go</p> <p>7 to Section C of my report, paragraph 64,</p> <p>8 entails understanding what the retailer profits</p> <p>9 from that sale are. And that would include,</p> <p>10 again, in theory, what the customer paid, what</p> <p>11 the third-party payor paid, inclusive, minus</p> <p>12 the retailer costs.</p> <p>13 Now, those costs, the retailers have</p> <p>14 already taken out the dispensing fee, but one</p> <p>15 can imagine there would be potentially other</p> <p>16 costs of dispensing those specific products</p> <p>17 that may be related to the point of sale, and</p> <p>18 might include other offsets that could have</p> <p>19 occurred.</p> <p>20 I discussed that in Footnote 84 where</p> <p>21 I say, "When calculating profits, the other</p> <p>22 offsets may be removed from gross profit should</p> <p>23 the jury or court find these to be reasonable</p> <p>24 deductions." That is relevant to unjust</p> <p>25 enrichment. It's not relevant to liability.</p>

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1 BY MS. KAPKE:
2 Q In terms of the actual calculation in
3 Attachment I --
4 A Which -- which attachment -- which
5 exhibit?
6 Q I.
7 A Right, which exhibit?
8 Q Your report, Exhibit 5.
9 MR. HONIK: I think there are multiple
10 Is.
11 THE WITNESS: Yeah. There are
12 multiple Is. There are -- there are -- are
13 multiple -- there's -- I think there are five
14 Is.
15 BY MS. KAPKE:
16 Q Okay. We can pick any one of them,
17 I.2, I.3, I --
18 A I can't hear you. I'm sorry.
19 Q We can just go to I.2.
20 A Okay, I.2. Okay. That's the unjust
21 enrichment table.
22 Q Correct.
23 A Right --
24 Q It's --
25 A Right. Which was -- which -- right?

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1 Which is enumerated in sum in Table 3.
2 Q Correct.
3 In terms of the actual calculations
4 done in Attachment I.2 --
5 A For CVS?
6 Q For CVS.
7 A Uh-huh.
8 Q It is equal to the full patient paid
9 amount, correct?
10 A Well, it's equal to the amount of
11 co-insurance and co-payments. There might be other
12 payments that were made, including a dispense fee.
13 There might be other payments that are made or other
14 offsets that were made. We just have what we were
15 provided by CVS, which is the consumer co-insurance
16 and co-payment amounts.
17 Q If you look at the notes, if you --
18 you reference it being equal to the full patient
19 paid amount?
20 A But, again, as I mentioned, there are
21 other amounts which include the dispensing fee that
22 consumers usually pay at the pharmacy counter.
23 Those were taken out to arrive at these sums.
24 And the point of unjust enrichment is
25 that it's based on the profit that CVS made, so

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1 there might be -- so this is the revenue paid for
2 this specific claim, aggregated over multiple drugs,
3 multiple --
4 THE COURT REPORTER: Multiple what?
5 THE WITNESS: Manufacturers, multiple
6 time periods.
7 But there might be additional costs
8 that CVS incurred in dispensing that product in
9 a particular time period. All I have is what
10 was paid. But from a theoretical perspective,
11 unjust enrichment should account for the cost
12 of dispensing that prescription, which might be
13 captured by the dispensing fee, but might have
14 additional costs on top of it. That's very
15 different than the theory of liability.
16 BY MS. KAPKE:
17 Q Putting aside this theoretical
18 perspective, in terms of the actual generation of
19 Attachment I.2, compared to the actual generation of
20 Attachment H.2 --
21 A Wait. Hold on. Let's go back to H.2
22 because I'm not sure. I just want to follow along
23 with you.
24 Okay. So I.2 is unjust enrichment for
25 CVS, and H.2 is liability claim for CVS. Okay.

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1 Q So putting aside the theoretical
2 perspective, the numbers generated in both H.2 and
3 I.2 are both based on the CVS retail claims data
4 equal to full patient paid amount?
5 A That's correct.
6 MR. HONIK: Object to form.
7 BY MS. KAPKE:
8 A So I mean, mechanically, they are the
9 same, but theoretically, they are not the same. And
10 so for my calculation, I only had the data that was
11 provided to me. When -- when and if a jury finds
12 there to be -- an award to be made, there's a
13 different process that would go into consumers or
14 third-party payors claiming the amount that they are
15 owed.
16 And that's where the theory matters
17 because the liability amounts in the actual world
18 are going to be related to the paid amounts.
19 Whereas, the unjust enrichment claims would be paid
20 amounts minus cost or revenues minus the cost of
21 that prescription being dispensed, which might be --
22 which might have a particular offset associated with
23 it.
24 Q I'm going to go back to Tables 1 and
25 2.

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1 A Okay. Do you mean 2 and 3?

2 Q No, I actually mean 1 and 2. I want

3 to understand the interplay between Table 1, the

4 aggregate manufacturer group damages and Table 2,

5 the aggregate retailer damages across liability

6 theories of damages.

7 By necessity, any damage you've

8 calculated in Table 2 for a retail pharmacy

9 defendant would already be included in the

10 manufacturer defendant calculations in Table 1,

11 correct?

12 MR. HONIK: Object to form.

13 You can answer.

14 THE WITNESS: Are you asking me

15 whether the IQVIA data that goes into the

16 calculation for Table 1 would include or be

17 inclusive of the retailer liability calculation

18 in Table 2 for each manufacturer retailer?

19 BY MS. KAPKE:

20 Q Sure. You can answer that question.

21 THE COURT REPORTER: I'm sorry?

22 BY MS. KAPKE:

23 Q Yeah. Please answer that question.

24 A Yes, but not in entirety. Because,

25 again, the retailers are only focused on the -- the

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1 retailer liability claims are only focused on

2 consumers' co-insurance and co-payment amounts.

3 Whereas, the manufacturer liability claims are

4 related to total payments for the at-issue drugs in

5 the at-issue time periods and the at-issue data.

6 Q So suppose a manufacturer -- strike

7 that.

8 Suppose the manufacturers paid to

9 consumers all of the damages in Table 1 under

10 "Consumer Damages." That would mean the consumers

11 were satisfied in full, correct? There'd be no

12 damages left for the retail pharmacy defendants to

13 pay?

14 MR. HONIK: Object to the form and to

15 the extent it calls for a legal conclusion

16 regarding ultimate allocation.

17 THE THE COURT REPORTER: Ultimate...

18 MR. HONIK: Allocation.

19 THE COURT REPORTER: Thank you.

20 THE WITNESS: Again, allocation

21 concerns are outside the scope of my analysis.

22 BY MS. KAPKE:

23 Q And I -- and I understand that. And

24 actually that was going to be my next question.

25 Do you ever -- you know, do you make

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1 allocation determinations? And it's good to know

2 that you don't.

3 A I have already testified to that -- to

4 that three times this morning.

5 Q I appreciate that.

6 But -- but let's engage in a

7 hypothetical world where the manufacturers pay all

8 of the damages. So we're not in a -- in a world

9 where allocation needs to be made, because the

10 manufacturers have paid everything in the "Consumer

11 Damages" column of Table 1. If that's the

12 hypothetical position that you assume, are there any

13 damages left for the retail pharmacy defendants to

14 pay?

15 MR. HONIK: Note my -- excuse me --

16 note my objection on a couple of bases.

17 Number 1, in the statement that was in

18 your question, Kara, that confirmed at least in

19 your question, that Dr. Conti made no

20 allocations, that's not correct. She didn't

21 make legal allocations, but she made lots and

22 lots of mathematical allocations, and she spent

23 hours talking about that. That's number 1.

24 MS. KAPKE: Sure.

25 MR. HONIK: And number 2, I just want

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1 to preserve my ongoing objection that your

2 question really requires a legal conclusion

3 about what liability will yield in the way of

4 an allocation as directed by a court or a

5 jury's verdict or otherwise.

6 With that, she can answer.

7 THE WITNESS: Thank you.

8 So this is your hypothetical, and

9 these are your assumptions. They're not mine.

10 And my understanding is that -- that

11 those determinations are ones that will be

12 answered by a court and a jury. They are --

13 they are outside my purview as I've already

14 testified.

15 BY MS. KAPKE:

16 Q Okay. I'm going to try to ask another

17 hypothetical question to get at it -- to get at it a

18 different way.

19 Assume a world in which all of -- all

20 that has occurred to date has occurred except the

21 filing of the lawsuit. And Aurobindo and Hetero and

22 Mylan and Teva and Torrent and ZHP paid to consumers

23 the sum total of [REDACTED], whatever the number is

24 on the bottom of that --

25 MS. KAPKE: Which I should note, for

<p style="text-align: right;">Page 70</p> <p>1 the record, that that's considered -- that</p> <p>2 number is considered a confidential number for</p> <p>3 purposes -- thank you for zooming in -- for</p> <p>4 purposes of the protective order. I'm going to</p> <p>5 start my question over.</p> <p>6 THE WITNESS: Thank you.</p> <p>7 BY MS. KAPKE:</p> <p>8 Q Yeah. Assume a world in which</p> <p>9 everything has occurred except for the filing of</p> <p>10 the -- of this lawsuit. And independent of a</p> <p>11 lawsuit, the manufacturers listed in Table 1 pay out</p> <p>12 to consumers the damages listed in column -- the</p> <p>13 column marked "Consumer Damages" in Table 1.</p> <p>14 So outside of the legal realm, in that</p> <p>15 instance, do the consumers have any damages left?</p> <p>16 MR. HONIK: Note my objection on the</p> <p>17 same basis as previously stated and insofar as</p> <p>18 this is an improper hypothetical and well</p> <p>19 beyond the scope of a health economist's</p> <p>20 opinion as expressed here. Finally, I would</p> <p>21 just add by way of objection that what you're</p> <p>22 really getting at is a kind of reallocation,</p> <p>23 not allocation. And I remind everyone that</p> <p>24 what Dr. Conti has done is to simply present a</p> <p>25 methodology for assessing damages, the</p>	<p style="text-align: right;">Page 72</p> <p>1 question. I'm sorry. Are we still in</p> <p>2 that -- this weird hypothetical world?</p> <p>3 BY MS. KAPKE:</p> <p>4 Q No.</p> <p>5 A I wasn't asked to calculate or do any</p> <p>6 analysis of?</p> <p>7 Q No. I'm asking a separate question.</p> <p>8 A Oh, okay.</p> <p>9 Q Does -- would the -- the consumer</p> <p>10 damages total represent a full refund of all the</p> <p>11 money that the consumer spent on the at-issue</p> <p>12 valsartan?</p> <p>13 MR. HONIK: Same objection as</p> <p>14 previously stated.</p> <p>15 THE WITNESS: A full refund? What do</p> <p>16 you mean by "a full refund"? I don't use that</p> <p>17 term in my report, so I would like you</p> <p>18 to -- I'd like you to define it for me.</p> <p>19 BY MS. KAPKE:</p> <p>20 Q Would it -- I'll -- I'll withdraw that</p> <p>21 question.</p> <p>22 What do the numbers in the "Consumer</p> <p>23 Damages" column of Table 1 represent?</p> <p>24 MR. HONIK: Objection, asked and</p> <p>25 answered.</p>
<p style="text-align: right;">Page 71</p> <p>1 allocation of which, at trial or otherwise, is</p> <p>2 outside the scope of the purview of her</p> <p>3 assignment.</p> <p>4 You may answer.</p> <p>5 THE WITNESS: I have no answer. I</p> <p>6 mean, I have no -- I'm not a lawyer, and I have</p> <p>7 no assessment of whether or not that payment --</p> <p>8 THE THE COURT REPORTER: That</p> <p>9 payment...</p> <p>10 THE WITNESS: That payment is --</p> <p>11 satisfies the claims or not. It's completely</p> <p>12 outside the scope of my assignment in this</p> <p>13 case.</p> <p>14 MR. HONIK: Are you making an offer,</p> <p>15 Kara?</p> <p>16 MS. KAPKE: Sorry. I was chewing ice.</p> <p>17 Oh, that was your attempt at being funny.</p> <p>18 Sorry, Ruben. I should have laughed.</p> <p>19 BY MS. KAPKE:</p> <p>20 Q Does Table 1, "Consumer Damages,"</p> <p>21 represent a full refund of all the consumers spent</p> <p>22 on the at-issue valsartan?</p> <p>23 MR. HONIK: Object to the form and for</p> <p>24 the reasons previously stated.</p> <p>25 THE WITNESS: I don't understand your</p>	<p style="text-align: right;">Page 73</p> <p>1 THE WITNESS: Let's go back to my</p> <p>2 explanation of how Table 1 was calculated.</p> <p>3 BY MS. KAPKE:</p> <p>4 Q You know what? I can withdraw that</p> <p>5 question. That's okay.</p> <p>6 A I'm happy to go -- I mean, I'm on</p> <p>7 paragraph 60. It's described as paragraph 60</p> <p>8 through 62.</p> <p>9 Q And that's fine. Ruben's right. You</p> <p>10 have -- you've answered that question.</p> <p>11 I -- I want to ask about -- it says</p> <p>12 right above Table 1, "Total damages across defendant</p> <p>13 manufacturers and retailers are not intended to be</p> <p>14 summed."</p> <p>15 Can you elaborate on what you mean by</p> <p>16 that?</p> <p>17 A I'm not there yet. Hold on.</p> <p>18 So, again, this is about the</p> <p>19 deduplication that we have been talking about for a</p> <p>20 while now. Let's start from the beginning of the</p> <p>21 paragraph. It's the -- it's the paragraph -- it's</p> <p>22 the previous page. Thank you.</p> <p>23 In paragraph 79, I explain, "The</p> <p>24 following tables present aggregate damages across</p> <p>25 all theories of liability. Details on aggregate</p>

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<p>1 damages for defendant manufacturers and retailers at</p> <p>2 the group, subgroup and state level are provided in</p> <p>3 the attachments in this declaration. In Table 1, I</p> <p>4 present deduplicated aggregate damages across all</p> <p>5 theories of liability for the defendant</p> <p>6 manufacturers. In Table 2, I prevent" -- "I present</p> <p>7 deduplicated aggregate damages across all theories</p> <p>8 of liability for the defendant retailers. In</p> <p>9 Table 3, I present deduplicated aggregate unjust</p> <p>10 enrichment damages for the defendant retailers. As</p> <p>11 described in footnote 62 above, some claims fall</p> <p>12 into multiple theories of liability. Therefore,</p> <p>13 total damages across defendant manufacturers," full</p> <p>14 stop, "and retailers are not intended to be summed."</p> <p>15 What I mean by that is, the Table 1</p> <p>16 damages are deduplicated. Table 2 damages, across</p> <p>17 different theories of liability, are also</p> <p>18 deduplicated. I also have footnotes, 72 and 73, for</p> <p>19 Tables 1 and 2 that -- that make that clear as well.</p> <p>20 Q Do you have an estimation of what</p> <p>21 percentage of the pharmacy market is covered by the</p> <p>22 pharmacy defendants in this case?</p> <p>23 MR. HONIK: Object to form.</p> <p>24 THE WITNESS: Well, some of the</p> <p>25 largest pharmacies in America are listed in the</p>	<p>(Whereupon, a short break was taken.)</p> <p>2 THE VIDEOGRAPHER: The time is 11:03.</p> <p>3 We're back on the record.</p> <p>4 BY MS. KAPKE:</p> <p>5 Q Dr. Conti, during the last break, or</p> <p>6 any breaks today, have you had any communications</p> <p>7 with anyone?</p> <p>8 MR. HONIK: Note my objection to the</p> <p>9 extent it may reveal confidential and</p> <p>10 privileged counsel communication.</p> <p>11 But without waiver of the objection,</p> <p>12 she may answer.</p> <p>13 THE WITNESS: I have spoken to my</p> <p>14 counsel.</p> <p>15 BY MS. KAPKE:</p> <p>16 Q During both breaks?</p> <p>17 MR. HONIK: Same objection.</p> <p>18 You may answer.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MS. KAPKE:</p> <p>21 Q Okay. Have you -- have you had any</p> <p>22 communications with staff?</p> <p>23 A You already asked me that question at</p> <p>24 the last break, and I said no. So at this same</p> <p>25 break -- at this next break, no, I did not have any</p>
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<p>1 retailers table. CVS, Walgreens, Walmart are</p> <p>2 absolutely enormous sellers of prescription</p> <p>3 drugs in the U.S. market.</p> <p>4 BY MS. KAPKE:</p> <p>5 Q And do you have an estimate of -- of</p> <p>6 what percentage that is?</p> <p>7 A No.</p> <p>8 THE COURT REPORTER: I'm sorry.</p> <p>9 You're both talking on top of each other.</p> <p>10 So I have, "Do you have an estimate of</p> <p>11 what percentage that is" as a question. And I</p> <p>12 have, "No" as an answer.</p> <p>13 THE WITNESS: No. I said not off the</p> <p>14 top of my head.</p> <p>15 BY MS. KAPKE:</p> <p>16 Q That's fine.</p> <p>17 Okay. I want to -- let's go back to</p> <p>18 the formulas in your report on paragraph 60 and 61.</p> <p>19 A Are we changing topics?</p> <p>20 Q Yeah.</p> <p>21 A Okay. Great. I would like to take a</p> <p>22 break then, please.</p> <p>23 MS. KAPKE: Okay.</p> <p>24 THE VIDEOGRAPHER: The time is 10:55.</p> <p>25 We're going off the record.</p>	<p>1 communications with my staff.</p> <p>2 Q Okay. Perfect.</p> <p>3 So I have a couple of questions that,</p> <p>4 again, I'm not really intending to be super</p> <p>5 controversial. But I just want to make sure I</p> <p>6 understand.</p> <p>7 So let's go to your report. And</p> <p>8 paragraph 60 and 61, you reference consumer class</p> <p>9 expenditures by breaking down into full payments for</p> <p>10 uninsured cash paying purchases on the one hand --</p> <p>11 THE COURT REPORTER: I'm sorry, Kara.</p> <p>12 I'm sorry. I lost you.</p> <p>13 THE WITNESS: Yeah. I -- I don't see</p> <p>14 it either.</p> <p>15 THE COURT REPORTER: "Consumer class</p> <p>16 expenditure by breaking it down into full</p> <p>17 payments for the uninsured"...</p> <p>18 MS. KAPKE: Cash paying purchases on</p> <p>19 one hand, and this is the formula. And co-pays</p> <p>20 for insurance -- or for insured consumers.</p> <p>21 THE WITNESS: I'm sorry. You -- hold</p> <p>22 on. I just want to try to understand what</p> <p>23 you're asking. So you referenced paragraph 60.</p> <p>24 Where do you see that? Because I don't see it.</p> <p>25</p>

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<p style="text-align: right;">Page 78</p> <p>1 BY MS. KAPKE: 2 Q Your formula. 3 A In paragraph -- in paragraph 60 on 4 Formula 1? It is not related -- it does not break 5 down into different types of payor types. 6 Q I'm looking at Formula 2 in 7 paragraph 61. 8 A Okay. So you said -- you directed me 9 to paragraph 60 and 61. I'm just trying to follow. 10 Q Okay. Here's my question. When you 11 reference uninsured cash paying purchases, are you 12 referring to anyone who did not have a co-pay, or 13 are you referring to a subset of those who paid with 14 physical cash? 15 A I don't understand your question. I'm 16 sorry. 17 Q In other words, are you -- are you 18 including in your formula uninsured patients who 19 paid for valsartan with a credit card? Do 20 you -- what do you mean by cash? 21 A Okay. Cash is cash, right? So what I 22 mean by this is they are paying out of pocket. The 23 method of payment, whether it be literally a \$5 bill 24 or using a credit card, from the industry's 25 perspective, both of those types of payments, that</p>	<p style="text-align: right;">Page 80</p> <p>1 MR. HONIK: Object to form. 2 You can answer. 3 THE WITNESS: I'm not following. What 4 are the three groups? 5 BY MS. KAPKE: 6 Q The insured, co-pay or co-insurance 7 pay group purchasers? 8 A Hold on. Those are two groups, not 9 three. 10 MR. HONIK: Yeah. 11 BY MS. KAPKE: 12 Q That's what I don't understand -- 13 THE COURT REPORTER: I can't take this 14 down. I cannot do that. One at a time. 15 MR. HONIK: Kara, respectfully, I 16 think you misspoke. You said insured. I think 17 you meant cash. It's cash, co-pay, 18 co-insurance. 19 BY MS. KAPKE: 20 Q No. So I'm looking at the third -- 21 under where -- the third line there, it says, Qdt 22 co-pay equals the quantity of product d purchased at 23 time period t for, 1, insured, 2, co-pay or 3, 24 co-insurance paying purchasers. 25 I don't know and -- I don't know what</p>
<p style="text-align: right;">Page 79</p> <p>1 people are paying out of pocket, they are paying in 2 cash. 3 Q Okay. That's what I assumed. I need 4 to check all of my assumptions, and that's what 5 we're here to do here today. 6 So for the uninsured cash paying 7 purchases, the formula requires input of the full 8 purchase price of the product. How is that 9 determined for the uninsured cash paying purchaser? 10 MR. HONIK: Objection, asked and 11 answered. 12 You can answer. 13 THE WITNESS: It's the full amount 14 that they paid at the pharmacy counter for the 15 at-issue drugs. 16 BY MS. KAPKE: 17 Q Okay. And then for the other part of 18 the formula, you're looking at insured co-pay or 19 co-insurance paying purchasers -- purchasers, 20 correct? 21 A Right. That's what it says here. 22 Q Yes. Here -- here is my question: Is 23 there a difference between insured co-pay or 24 co-insurance paying purchasers? Is there some sort 25 of delineation between those three groups?</p>	<p style="text-align: right;">Page 81</p> <p>1 you mean, if there is a distinction between those 2 three words, insured, co-pay or co-insurance. Or do 3 they all mean the same thing? 4 A Are you asking me for the definition 5 of insured, co-pay, co-insurance? 6 Q I'm asking if there's a difference 7 between those -- those three things. 8 A Okay. There is a variable in the 9 Xponent data that delineates or distinguishes 10 between people who are paying cash -- they're 11 uninsured for that specific prescription -- and 12 people who are -- who are insured and still are 13 required to pay a co-insurance or co-pay amount. 14 So the first part of this last phrase, 15 "insured or cash" in the previous tab under 16 "quantity," delineates the distinction. Are these 17 people cash paying, or are these people insured and 18 paying a co-payment or a co-insurance? And the way 19 that you can tell the difference is if you go to the 20 term "Qdt cash," those are uninsured cash paying 21 purchasers. 22 THE WITNESS: And for the court 23 reporter, you should actually highlight the 24 first row. Dt cash equals uninsured cash 25 paying purchasers.</p>

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<p style="text-align: right;">Page 82</p> <p>1 BY MS. KAPKE:</p> <p>2 Q Okay. And this --</p> <p>3 A Hold on, just to make sure that we're</p> <p>4 on the same page.</p> <p>5 And then for people who are insured,</p> <p>6 sometimes they don't have to pay anything when they</p> <p>7 get their prescription filled, particularly for</p> <p>8 really low-cost generic drugs. And sometimes they</p> <p>9 are still required by their insurer to pay a</p> <p>10 co-insurance and a -- or a co-payment amount, and</p> <p>11 then their insurer may pay the remainder.</p> <p>12 That is the distinction that we are</p> <p>13 making here -- or that I am making here.</p> <p>14 Q Thank you. That's helpful.</p> <p>15 Is there a difference between a co-pay</p> <p>16 and a co-insurance?</p> <p>17 A Yes.</p> <p>18 Q What is that?</p> <p>19 A So co-payments tend to be flat. In</p> <p>20 other words, \$5 for every -- every generic</p> <p>21 prescription or \$1 for every generic prescription.</p> <p>22 Whereas co-insurance is a percentage of the total</p> <p>23 paid amount or the total charge for their</p> <p>24 prescription. So it's -- to make it really</p> <p>25 concrete, it will be 15 percent of the total paid</p>	<p style="text-align: right;">Page 84</p> <p>1 So the economic price for damages</p> <p>2 equals the price of each at-issue prescription sold</p> <p>3 and paid. That relates to the liability damages</p> <p>4 that you offered up a formula for, not the unjust</p> <p>5 enrichment damages that you offered an opinion on;</p> <p>6 is that correct?</p> <p>7 MR. HONIK: Object to form.</p> <p>8 A I don't follow your question.</p> <p>9 BY MS. KAPKE:</p> <p>10 Q Okay. I'll -- I'll withdraw it.</p> <p>11 Okay. Let's go to the unjust</p> <p>12 enrichment formula. I don't remember what paragraph</p> <p>13 that is.</p> <p>14 MR. HONIK: 63.</p> <p>15 MS. KAPKE: Thanks. Thank you, Ruben.</p> <p>16 BY MS. KAPKE:</p> <p>17 Q The basic formula you list here is</p> <p>18 revenue minus costs, and then you expand that out to</p> <p>19 provide additional detail. And I want to ask about,</p> <p>20 first, revenue.</p> <p>21 To determine revenue, you offer a</p> <p>22 formula of average out-of-pocket costs for Unit 2</p> <p>23 consumers of product d sold by the retailer over</p> <p>24 time period t. In this formula, does this average</p> <p>25 out --</p>
<p style="text-align: right;">Page 83</p> <p>1 amount.</p> <p>2 Q Got it. Thank you.</p> <p>3 Okay. Let's go to Paragraph 56 of</p> <p>4 your report. And can you read to yourself</p> <p>5 the -- that paragraph?</p> <p>6 A So that's finished.</p> <p>7 Q Let me know when you're done.</p> <p>8 MR. HONIK: It's a request. She'd</p> <p>9 like you to read it.</p> <p>10 THE WITNESS: Oh, okay. It's a</p> <p>11 request, all right. Just -- just following.</p> <p>12 MR. HONIK: Yeah.</p> <p>13 THE WITNESS: Okay.</p> <p>14 BY MS. KAPKE:</p> <p>15 Q Are you alleging that the retail</p> <p>16 pharmacy defendants committed fraud?</p> <p>17 MR. HONIK: Object to the form and to</p> <p>18 the extent it calls for a legal conclusion.</p> <p>19 You can answer.</p> <p>20 THE WITNESS: We already talked about</p> <p>21 this multiple times. I was asked to assume</p> <p>22 what was in the complaint and discussed in my</p> <p>23 Paragraphs 1, 2 and 3.</p> <p>24 BY MS. KAPKE:</p> <p>25 Q Got it.</p>	<p style="text-align: right;">Page 85</p> <p>1 A I don't see that. I'm sorry.</p> <p>2 So actually, I -- I define retail</p> <p>3 revenue of product -- product d, sold to consumers</p> <p>4 over time period t. Is that what you're referring</p> <p>5 to?</p> <p>6 Q Uh-huh.</p> <p>7 A Okay. And then I go on to talk about</p> <p>8 revenue expressed in Formula 5.</p> <p>9 Q Correct.</p> <p>10 A Correct. Okay.</p> <p>11 Q And in Formula 5, the consumer, PPU,</p> <p>12 is the average out-of-pocket cost per unit to</p> <p>13 consumers of product d sold by the retailer over</p> <p>14 time period t?</p> <p>15 MR. HONIK: Object to form.</p> <p>16 You can answer.</p> <p>17 THE WITNESS: That's what it says</p> <p>18 here.</p> <p>19 BY MS. KAPKE:</p> <p>20 Q Okay. Does that average out-of-pocket</p> <p>21 cost per unit to consumers in your formula include</p> <p>22 only class members or all individuals who are</p> <p>23 dispensed at-issue valsartan?</p> <p>24 MR. HONIK: Object to form and to the</p> <p>25 extent it calls for a legal conclusion.</p>

22 (Pages 82 - 85)

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<p style="text-align: right;">Page 86</p> <p>1 You can answer.</p> <p>2 THE WITNESS: I'm sorry, I don't</p> <p>3 understand the question you're asking. Can you</p> <p>4 please clarify?</p> <p>5 BY MS. KAPKE:</p> <p>6 Q For purposes of your formula, when</p> <p>7 you're calculating the average out-of-pocket cost</p> <p>8 per unit to consumers, are you including in</p> <p>9 consumers, in your theoretical world, all consumers</p> <p>10 of at-issue valsartan or only class members?</p> <p>11 MR. HONIK: Object to form, calls for</p> <p>12 a legal conclusion.</p> <p>13 You may answer.</p> <p>14 THE WITNESS: I mean, as a -- as a</p> <p>15 mechanical concern, we're only -- or I'm only</p> <p>16 calculating based on consumers that paid for</p> <p>17 the at-issue drugs in the at-issue time period,</p> <p>18 their out-of-pocket cost.</p> <p>19 BY MS. KAPKE:</p> <p>20 Q Would the average out-of-pocket cost</p> <p>21 include consumers who paid nothing?</p> <p>22 MR. HONIK: Object to the form, and</p> <p>23 class membership is a legal matter, beyond the</p> <p>24 scope.</p> <p>25 THE WITNESS: I don't understand what</p>	<p style="text-align: right;">Page 88</p> <p>1 theoretical perspective, saying that you need to</p> <p>2 factor in the average cost of product -- the average</p> <p>3 out-of-pocket cost per unit to consumers, when</p> <p>4 you're doing that average, are you including</p> <p>5 consumers --</p> <p>6 A In theory -- in theory or in practice?</p> <p>7 Q In theory.</p> <p>8 A Okay.</p> <p>9 Q In theory, does your average include</p> <p>10 those consumers who paid nothing?</p> <p>11 MR. HONIK: Object to the form.</p> <p>12 You can answer.</p> <p>13 THE WITNESS: So by definition,</p> <p>14 mechanically, they would contribute 0, right?</p> <p>15 And so there is no payment made.</p> <p>16 BY MS. KAPKE:</p> <p>17 Q So do you include them in the</p> <p>18 denominator?</p> <p>19 A They fall out of the denominator in</p> <p>20 theory because they pay 0.</p> <p>21 Q Okay. I want to go to the formula to</p> <p>22 determine costs in your report.</p> <p>23 So retailer costs of dispensing</p> <p>24 product d to consumers over time period t, do you</p> <p>25 see that?</p>
<p style="text-align: right;">Page 87</p> <p>1 you're asking. I'm sorry.</p> <p>2 MS. KAPKE: Okay. And, Ruben, I'm</p> <p>3 going to just ask a question that's untethered</p> <p>4 to my prior questions.</p> <p>5 BY MS. KAPKE:</p> <p>6 Q So in looking at this formula --</p> <p>7 MR. HONIK: Does "untethered" mean</p> <p>8 crazy?</p> <p>9 MS. KAPKE: No.</p> <p>10 BY MS. KAPKE:</p> <p>11 Q I just want to -- I want to try and</p> <p>12 figure out this -- how you're deriving average</p> <p>13 out-of-pocket cost per unit to consumers.</p> <p>14 MR. HONIK: Okay.</p> <p>15 THE WITNESS: There's a formula. Then</p> <p>16 there's a mechanical calculation. Those are</p> <p>17 two different things, right?</p> <p>18 MR. HONIK: That's the mash-up</p> <p>19 problem, Kara. You're mashing up two things.</p> <p>20 THE WITNESS: Yeah. I don't --</p> <p>21 MS. KAPKE: Okay.</p> <p>22 MR. HONIK: I'm sure Dr. Conti can</p> <p>23 explain it to you though.</p> <p>24 BY MS. KAPKE:</p> <p>25 Q Okay. When you are, from a</p>	<p style="text-align: right;">Page 89</p> <p>1 A Yes.</p> <p>2 Q Are you referring in your formula</p> <p>3 here, from the theoretical perspective, only to the</p> <p>4 amount of money that a pharmacy would pay to a</p> <p>5 wholesaler or directly to a manufacturer for the</p> <p>6 dispensed product?</p> <p>7 A Go down to Formula 6 on the next page,</p> <p>8 and you can see how I defined costs. Retail costs</p> <p>9 of dispensing to consumers can be expressed in</p> <p>10 Formula 6 as a function of the quantity of units of</p> <p>11 product d sold to consumer over time period t and</p> <p>12 the average retailer cost per unit of product d over</p> <p>13 time period t to dispense to consumers. It is the</p> <p>14 cost of dispensing.</p> <p>15 Q And that would include what?</p> <p>16 A Well, the retailers took</p> <p>17 out -- interpreted that as the dispensing fee and</p> <p>18 took the dispensing fee for each prescription out of</p> <p>19 the data that was provided to us.</p> <p>20 Q I want to -- I want to remove the</p> <p>21 mechanical aspects and just talk about this from a</p> <p>22 theoretical perspective.</p> <p>23 If you are -- are looking at this from</p> <p>24 a purely academic perspective, what do you want to</p> <p>25 see in terms of defining retailer costs for purposes</p>

23 (Pages 86 - 89)

<p style="text-align: right;">Page 90</p> <p>1 of this formula?</p> <p>2 MR. HONIK: Object to form.</p> <p>3 THE WITNESS: I'm not calculating</p> <p>4 retailer costs here. I'm talking -- I'm</p> <p>5 referring to dispensing costs. They are</p> <p>6 different things.</p> <p>7 BY MS. KAPKE:</p> <p>8 Q Okay.</p> <p>9 A I mean, that's what's listed here.</p> <p>10 Retailer cost of this dispensing to consumers,</p> <p>11 that's -- that's what I'm -- that's the object in</p> <p>12 theory that I'm referring to.</p> <p>13 Q Okay. And the same question; taking</p> <p>14 away the mechanical aspect of this, in theory, from</p> <p>15 a purely academic perspective, what do you want to</p> <p>16 see in terms of retailer cost of dispensing to</p> <p>17 consumers?</p> <p>18 MR. HONIK: Object to form.</p> <p>19 THE WITNESS: It's the unit cost of</p> <p>20 dispensing a given prescription to a given</p> <p>21 patient.</p> <p>22 BY MS. KAPKE:</p> <p>23 Q What goes into that?</p> <p>24 A The marginal cost of dispensing will</p> <p>25 be the labor cost of filling the -- the vial and</p>	<p style="text-align: right;">Page 92</p> <p>1 those are point of sale costs, because my</p> <p>2 understanding is that -- is that they are not.</p> <p>3 BY MS. KAPKE:</p> <p>4 Q I'm asking you if -- what your formula</p> <p>5 takes into consideration.</p> <p>6 A I already defined that. It's the cost</p> <p>7 of dispensing a product to the consumer.</p> <p>8 Q Okay. So if -- and let's just take a</p> <p>9 hypothetical --</p> <p>10 A Another hypothetical.</p> <p>11 Q -- outside -- outside of valsartan.</p> <p>12 Say a drug -- say a pharmacy purchases</p> <p>13 a drug from -- directly from a manufacturer for \$10</p> <p>14 and then sells that drug to an uninsured customer</p> <p>15 for \$20. And say that the dispensing costs are \$5,</p> <p>16 and we're in this weird world where we know that the</p> <p>17 dispensing costs are \$5. Is the profit, under your</p> <p>18 formula, \$5 or \$10?</p> <p>19 MR. HONIK: Object to form.</p> <p>20 THE WITNESS: Okay. So you have a</p> <p>21 very -- that is -- that is a hypothetical that</p> <p>22 is bizarre in many ways. And I'm not aware of</p> <p>23 a generic drug having a dispensing fee of \$5</p> <p>24 ever associated with it. So let's just</p> <p>25 dispense it.</p>
<p style="text-align: right;">Page 91</p> <p>1 actually giving it to the patient. It might include</p> <p>2 some additional costs as well. But they are</p> <p>3 marginal -- marginal to the dispensing of an actual</p> <p>4 unit to a patient at the point of sale.</p> <p>5 THE COURT REPORTER: I'm sorry?</p> <p>6 THE WITNESS: At -- excuse me -- the</p> <p>7 point of sale.</p> <p>8 THE COURT REPORTER: Thank you.</p> <p>9 THE WITNESS: It can be the cost of</p> <p>10 the vial itself. It can be the cost of a paper</p> <p>11 bag. It can be the cost of the clerk sitting</p> <p>12 at the pharmacy counter actually giving it to</p> <p>13 the patient and ringing them up for the charge.</p> <p>14 It could be the incremental cost of the</p> <p>15 pharmacist, actually their time inputting the</p> <p>16 drug into the -- the unit, and then into the</p> <p>17 bag that they get at the pharmacy counter.</p> <p>18 Those are dispensing costs.</p> <p>19 BY MS. KAPKE:</p> <p>20 Q Does your formula take into account,</p> <p>21 in addition to dispensing costs, the actual cost of</p> <p>22 the drug that retailer pharmacy defendants would pay</p> <p>23 to whomever they obtained the drug for -- from?</p> <p>24 MR. HONIK: Object to form.</p> <p>25 THE WITNESS: Are you saying that</p>	<p style="text-align: right;">Page 93</p> <p>1 At the end of the day, it is the</p> <p>2 cost -- the dispensing costs are the costs that</p> <p>3 are incremental to a given patient in a given</p> <p>4 drug at the point of sale.</p> <p>5 So as I mentioned before, it's the</p> <p>6 cost of putting the drug in the vial. It's the</p> <p>7 cost of putting it in the bag. It's the cost</p> <p>8 of printing the label and giving all the</p> <p>9 consumer information to the consumer. It might</p> <p>10 be the labor cost of the pharmacist talking to</p> <p>11 the patient about the benefits and side-effects</p> <p>12 of taking this drug relative to others, and</p> <p>13 side-effect profile of that drug at the point</p> <p>14 of sale. That's what I think dispensing cost</p> <p>15 means.</p> <p>16 BY MS. KAPKE:</p> <p>17 Q Thank you for that.</p> <p>18 And I'm -- I'm just trying to</p> <p>19 understand if your -- if the cost of procurement is</p> <p>20 included in your formula for cost?</p> <p>21 A Where do you see in my report that the</p> <p>22 cost of procurement is included in my definition of</p> <p>23 dispensing costs?</p> <p>24 Q I'm asking you a question.</p> <p>25 A I have defined dispensing cost five</p>

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<p style="text-align: right;">Page 94</p> <p>1 separate times. It's also defined very clearly in 2 my report. This is a -- 3 Q I'm not asking you -- 4 A Excuse me. This is a term of art in 5 this field. I am using it correctly and precisely, 6 and I have restated over and over again the 7 definition of dispensing cost. 8 Q I understand that. 9 I'm not asking you if your -- so your 10 formula is revenue minus costs? 11 A No. My formula is retail cost of 12 dispensing to consumers. That is in Formula 6 -- 13 Q Okay. I'm looking at -- 14 A -- where I define the cost of 15 dispensing to the consumer at the point of sale. 16 It's the quantity of the unit times average retailer 17 cost per unit of dispensing to the consumer. 18 Dispensing to the consumer is a cost. Anyone who 19 knows anything about this industry knows what a 20 dispensing cost is. It's related to the labor and 21 capital that goes into handing a prescription of the 22 drug to a patient at the pharmacy counter. That is 23 what I am using here as cost. 24 Q Let's look at Formula 4, please. 25 A No. I'm not -- I mean, I'm happy to</p>	<p style="text-align: right;">Page 96</p> <p>1 out of the data they gave me. There's no -- this is 2 not a theoretical. This is an -- this relates to an 3 actual thing, that you, the retailers, know what it 4 is because you took it out of the data that was 5 provided to myself and my staff. 6 Q What are DIR fees? 7 A They are payments that can be made 8 between entities in the pharmaceutical industry. 9 Q Is it your understanding that DIR fees 10 are typically collected retrospectively after the 11 point of sale? 12 A My understanding is that there's a 13 range of different arrangements. 14 THE THE COURT REPORTER: There is or 15 there isn't a range? 16 THE WITNESS: There is a range of 17 different arrangements. And they only relate 18 to certain types of products and a certain type 19 of transaction and certain time periods. The 20 use of DIR fees have been growing over time. 21 BY MS. KAPKE: 22 Q Are there other fees besides DIR fees 23 that are assessed after the point of sale? 24 A For who to who? 25 Q For commercial plans.</p>
<p style="text-align: right;">Page 95</p> <p>1 go back to Formula 4. But, again, I define the cost 2 in Formula 4 as related to Formula 6, the cost of 3 dispensing to consumers. They are one and the same. 4 Q Okay. That's what I'm trying to 5 understand. And -- and I'm sorry if I am -- I -- I 6 don't under- -- I don't understand the answer to 7 this question. 8 Does the formula in Formula 4, when it 9 says revenue minus costs, does costs there refer to 10 any costs other than the dispensing costs that you 11 have identified for me and explained? 12 A Again, the cost defined in Formula 4, 13 cost dt, is defined underneath cost dt equals the 14 retailer cost of dispensing product d to consumers 15 over time period t. 16 I then go on to define cost in more 17 detail where I say, retailer costs of dispensing to 18 consumers can be expressed in Formula 6 as cost dt 19 equals Qdt, the quantity of units of product d sold 20 to consumers over time period t times the retailer 21 CPUdt, the average retailer cost per unit of product 22 d over time period t to dispense to consumers. I 23 can't -- I can't be any clearer than that. 24 And clearly, the retailers know what a 25 dispensing fee is because they actually took that</p>	<p style="text-align: right;">Page 97</p> <p>1 A I don't -- I don't understand -- I 2 don't understand the question. 3 Q Okay. I'll withdraw it. 4 Can you explain, generally, what a 5 dispensing fee is? 6 MR. HONIK: Objection, asked and 7 answered. 8 THE WITNESS: Like, seven times, but 9 who's counting? 10 So a dispensing fee is a fee that is 11 charged to consumers and to third-party payors 12 for the dispensing of a prescription at the 13 point of sale. 14 BY MS. KAPKE: 15 Q Who do you believe pays the dispensing 16 fee? 17 A Well, I'll tell you that I went to the 18 pharmacy earlier this week, and I paid the 19 dispensing fee. So usually for oral drugs, 20 consumers at the point of sale pay dispensing fees 21 if they -- 22 THE THE COURT REPORTER: If they what? 23 THE WITNESS: If they are required to. 24 If they have insurance that covers those 25 dispensing fees, insurers will pay for those</p>

25 (Pages 94 - 97)

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1 dispensing fees. It depends on the
2 arrangement.
3 BY MS. KAPKE:
4 Q What pharmacy do you -- did you use?
5 A CVS. They're my favorite.
6 Q Who determines what the dispensing fee
7 is?
8 A I don't know. I'm assuming the
9 pharmacy itself, but I don't know.
10 Q Is it negotiated over time?
11 MR. HONIK: Object to form.
12 THE WITNESS: I don't know.
13 BY MS. KAPKE:
14 Q How much do you think a dispensing fee
15 typically amounts to?
16 A For an oral generic drug, it can be on
17 the order of cents or a dollar. Usually, it's
18 nominal, but it really depends.
19 Q In terms of your profit calculations,
20 did the cost of the ingredients factor in in any
21 way?
22 MR. HONIK: Object to the form, asked
23 and answered.
24 THE WITNESS: Again, I have defined
25 the cost related to the dispensing fee.

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1 Dispensing fees, as I understand them, do not
2 relate to the cost of the ingredient, but might
3 relate to whether the product is generic or
4 branded or the formulation of the product.
5 Because, again, there's labor costs associated
6 with that dispensing fee, and some drugs
7 require more labor costs and more capital
8 to -- to deal with them.
9 BY MS. KAPKE:
10 Q You mentioned a couple of times how
11 products are commonly repackaged and relabeled by
12 private label distributors and retailers. Are you
13 making any allegations in this case that CVS, or any
14 retail pharmacy defendant in this case, repackaged
15 or relabeled valsartan?
16 MR. HONIK: Object to the form.
17 THE WITNESS: I don't know.
18 MS. KAPKE: I am, for purposes of
19 time, am going to pass the witness.
20 MR. HONIK: Thank you.
21 THE WITNESS: Thank you.
22 I think now is a good time for me to
23 take a break then, please.
24 MR. HONIK: Okay. Five minutes
25 enough?

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1 THE WITNESS: That's great. Thank
2 you.
3 THE VIDEOGRAPHER: The time is 11:41.
4 This ends Media Number 2. We're going off the
5 record.
6 (Whereupon, a short break was taken.)
7 MR. HONIK: Plaintiffs are back at
8 11:46 and are ready to proceed.
9 THE VIDEOGRAPHER: The time is 11:49.
10 This begins Media Unit Number 3. We're back on
11 the record.
12 EXAMINATION BY MR. CAMPBELL:
13 Q Okay. Good morning, still, Dr. Conti.
14 My name is Dan Campbell. I'm going to ask you some
15 questions about your opinions --
16 THE COURT REPORTER: I'm sorry. You
17 trailed off. You're going to ask questions...
18 BY MR. CAMPBELL:
19 Q Regarding your opinions about the
20 wholesalers in this case.
21 A Okay.
22 Q Can you hear me okay, Dr. Conti?
23 A Yes.
24 Q Okay.
25 MR. CAMPBELL: And, Madam Court

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1 Reporter, can you hear me okay, also?
2 THE COURT REPORTER: You're a little
3 low, but I can hear you.
4 MR. CAMPBELL: Okay. I pulled the
5 microphone as close as I can get it here, so I
6 will do the best I can.
7 BY MR. CAMPBELL:
8 Q So, Dr. Conti, you talked a lot
9 yesterday about your role as a professor, your
10 coursework, your class work. How much of that
11 coursework, that class work, involves
12 wholesaler-specific issues?
13 A I have spent some time understanding a
14 wholesaler's role in this industry. I have had the
15 pleasure of working with some folks at Cardinal and
16 at AmerisourceBergen and in multiple contexts.
17 THE THE COURT REPORTER: Did you say
18 -- did you say Amerisource?
19 THE WITNESS: AmerisourceBergen.
20 THE COURT REPORTER: Okay.
21 BY MR. CAMPBELL:
22 Q In what sort of context --
23 A And Cardinal.
24 Q Thank you.
25 A Yeah.

<p style="text-align: right;">Page 102</p> <p>1 Q In what context did you work with</p> <p>2 those folks at Cardinal and AmerisourceBergen?</p> <p>3 A Again, just in the normal course of my</p> <p>4 business, I spend a lot of time trying to understand</p> <p>5 how this industry works and the role wholesalers has</p> <p>6 is part of the -- part of the ecosystem.</p> <p>7 Q Were you --</p> <p>8 A So I can be -- I can be more specific.</p> <p>9 I've been on -- I've been on panels and conferences.</p> <p>10 I've been in closed-door meetings, discussing</p> <p>11 various issues related to reimbursement, financing,</p> <p>12 organization, regulation, where wholesaler</p> <p>13 representatives have been there. And I know</p> <p>14 something about the wholesaler data that -- that</p> <p>15 wholesalers such as Cardinal and AmerisourceBergen</p> <p>16 maintain. What else should I tell you?</p> <p>17 I teach about the role of wholesalers</p> <p>18 in this ecosystem and have had the pleasure of</p> <p>19 reviewing shareholder reports of AmerisourceBergen,</p> <p>20 Cardinal and other public wholesalers operating in</p> <p>21 the U.S. market.</p> <p>22 Q And so you mentioned that earlier this</p> <p>23 morning. Those are the public finance reports that</p> <p>24 you reviewed either last night or this morning?</p> <p>25 A No, I mean -- so, again, I'm talking</p>	<p style="text-align: right;">Page 104</p> <p>1 Q Okay. All right. We may follow up</p> <p>2 with your counsel on that.</p> <p>3 A Sure.</p> <p>4 Q Have you -- you mentioned earlier</p> <p>5 today a study that you did, I think when you were a</p> <p>6 professor at Chicago, involving Walgreens and data</p> <p>7 that you were working with from -- from Walgreens.</p> <p>8 Do you remember that discussion?</p> <p>9 A Yes.</p> <p>10 Q Okay. Have you ever done any sort of</p> <p>11 similar study with the wholesaler or with wholesaler</p> <p>12 data like the Walgreens study?</p> <p>13 A I have -- so, I have never published</p> <p>14 work in --</p> <p>15 THE THE COURT REPORTER: I'm sorry. I</p> <p>16 have never published working...</p> <p>17 THE WITNESS: Work in collaboration</p> <p>18 with the wholesalers who are members in this</p> <p>19 matter. I have looked at wholesaler data where</p> <p>20 the -- it was shared with me at a screen share.</p> <p>21 BY MR. CAMPBELL:</p> <p>22 Q What sort of wholesale data was shared</p> <p>23 with you on a screen share?</p> <p>24 A Transaction data for specific drugs.</p> <p>25 Q Related to the drugs at-issue in this</p>
<p style="text-align: right;">Page 103</p> <p>1 generally. So part of my course that I teach on</p> <p>2 Strategy in the Pharmaceutical Industry requires</p> <p>3 that my students do shareholder report analysis.</p> <p>4 And we focus both on pharmaceutical manufacturers,</p> <p>5 but also other entities that are important in the</p> <p>6 supply chain, which include the wholesalers and also</p> <p>7 include some of the retailers that we've talked</p> <p>8 about.</p> <p>9 There are a handful of shareholder</p> <p>10 reports that I looked at over the past couple of</p> <p>11 days that include Mylan, Teva -- I think maybe one</p> <p>12 more of the defendant manufacturers. And I</p> <p>13 certainly looked over gross revenues of the retailer</p> <p>14 pharmacies as well.</p> <p>15 Q Do you remember any specific</p> <p>16 individuals at Cardinal or AmerisourceBergen at any</p> <p>17 of those conferences or panels when you were there</p> <p>18 with them?</p> <p>19 A Not off the top of my head. I am in</p> <p>20 email correspondence with a number of former</p> <p>21 executives working on some work related to private</p> <p>22 labeling activities for some drugs that went into</p> <p>23 short supply, but not ones that are related in this</p> <p>24 matter. I'm more than happy to tell you who those</p> <p>25 are. I just don't have them off the top of my head.</p>	<p style="text-align: right;">Page 105</p> <p>1 case?</p> <p>2 A No.</p> <p>3 Q And do you remember the components of</p> <p>4 the transaction data that were shared with you?</p> <p>5 A Yeah. There were drug names, units</p> <p>6 and --</p> <p>7 THE COURT REPORTER: And...</p> <p>8 THE WITNESS: Paid amounts.</p> <p>9 And there were also, I think,</p> <p>10 manufacturer names as well. But in this</p> <p>11 specific context, we were -- we were actually</p> <p>12 looking at the differences in --</p> <p>13 THE THE COURT REPORTER: I'm sorry.</p> <p>14 Somebody is shuffling papers.</p> <p>15 We were looking at the differences</p> <p>16 in...</p> <p>17 THE WITNESS: We were looking at</p> <p>18 transactions -- I'm sorry. There's a lot of</p> <p>19 background noise. I hear it too.</p> <p>20 There's -- there were transactions</p> <p>21 related to manufacturers and -- for specific</p> <p>22 drugs. And then the relabeling of certain</p> <p>23 product by the wholesaler distributors for</p> <p>24 certain types of product.</p> <p>25</p>

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1 Q It took you many hours, also, to write
2 the report, correct?
3 A Yes.
4 Q Okay. All right. Do you remember how
5 much of that time you actually spent writing the
6 last two pages of the report, which has the formulas
7 for the wholesalers, the proposed formulas?
8 A Yeah. I thought a lot about those
9 last two -- those last two pages.
10 Q Do you know the number of hours you
11 spent on those last two pages?
12 A No, sorry, not off the top of my head.
13 As I told you, I -- I have been a little bit remiss
14 in getting my time together. I like to double and
15 triple check it before I submit it, and it's been a
16 busy couple of months. So I don't know. I'm sorry.
17 Q That's all right.
18 And in the records that you do have of
19 the time that you spent on the report, would they
20 indicate which parts of the report you were working
21 on?
22 A Not really.
23 Q So will we ever see an invoice, for
24 example, that breaks down which portions of the
25 report you were working on in a given time entry?

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1 A Do you mean, like, Section 1, 2 and 3?
2 Q Yes, or -- or by page number?
3 A I haven't apportioned to that. That's
4 just not how I work, so no.
5 Q Okay. If you --
6 MR. CAMPBELL: If Mr. or Ms. Tech
7 could pull up the report, I think it's
8 Exhibit 5. And, Dr. Conti, I'm going to refer
9 you to Attachment B to start with, please.
10 BY MR. CAMPBELL:
11 Q Dr. Conti, let me know when you're at
12 Attachment B.
13 A Just give me a second.
14 Q Sure.
15 A Okay.
16 Q And I'm going to stay on the first
17 page of Attachment B, so you don't have to worry
18 about flipping pages here. Do you see the section
19 that's the second section that's called "Case
20 Documents"?
21 A Yes.
22 Q All right. So in this section of case
23 documents, is this a list of all the documents that
24 are -- in this matter, in this case, that you --
25 that you reviewed?

<p style="text-align: right;">Page 110</p> <p>1 A Yes.</p> <p>2 Q So there are no documents coming out</p> <p>3 of this case that you reviewed but did not list?</p> <p>4 A Right. Other than in the course of</p> <p>5 normal events in my daily life, I know something</p> <p>6 about all of these -- all of the defendants.</p> <p>7 Defenses.</p> <p>8 Q Right. Okay. And so you list here</p> <p>9 one declaration of Matthew Sample. Do you see that?</p> <p>10 It's the second one listed.</p> <p>11 A Yes.</p> <p>12 Q Do you know who Matthew Sample is an</p> <p>13 employee of?</p> <p>14 A I don't, not off the top of my head.</p> <p>15 Oh, I do, actually. It's in Footnote 76, defendant</p> <p>16 wholesaler AmerisourceBergen Corporation represented</p> <p>17 that producing such data would be --</p> <p>18 THE COURT REPORTER: I'm sorry,</p> <p>19 Doctor. Producing such data would be...</p> <p>20 THE WITNESS: Sorry. Footnote 76, if</p> <p>21 we can go back to my main report.</p> <p>22 BY MR. CAMPBELL:</p> <p>23 Q And, Dr. Conti, you don't need to read</p> <p>24 it. I just wanted to ask you a simple question.</p> <p>25 Did you review any other -- or any declarations from</p>	<p style="text-align: right;">Page 112</p> <p>1 Cardinal Health, McKesson or AmerisourceBergen in</p> <p>2 this case, correct?</p> <p>3 A Correct.</p> <p>4 Q Did you ask to see any electronic data</p> <p>5 from any of them?</p> <p>6 A Yes.</p> <p>7 Q All right. And so who did you ask?</p> <p>8 A Counsel.</p> <p>9 Q What were you told?</p> <p>10 MR. HONIK: Let me note my -- note my</p> <p>11 objection. It invades the attorney work</p> <p>12 product and other privileges.</p> <p>13 But without waiver of that objection,</p> <p>14 she may answer.</p> <p>15 THE WITNESS: That there were -- that</p> <p>16 there was no --</p> <p>17 THE THE COURT REPORTER: That there</p> <p>18 was no...</p> <p>19 THE WITNESS: Data produced.</p> <p>20 BY MR. CAMPBELL:</p> <p>21 Q Let me refer you back in your report</p> <p>22 to Paragraph 3, early on in your report --</p> <p>23 MR. CAMPBELL: If the tech can get</p> <p>24 back to that area, please.</p> <p>25</p>
<p style="text-align: right;">Page 111</p> <p>1 any other wholesaler representatives --</p> <p>2 A Not -- not off the top --</p> <p>3 Q -- in this case?</p> <p>4 A Not off the top of my head.</p> <p>5 Q And did you review any documents that</p> <p>6 were produced by either Cardinal Health or McKesson</p> <p>7 or AmerisourceBergen?</p> <p>8 A No.</p> <p>9 Q Did you review any deposition</p> <p>10 testimony from any representatives of</p> <p>11 Cardinal Health, McKesson or AmerisourceBergen?</p> <p>12 A No.</p> <p>13 Q And a little bit further down, I</p> <p>14 believe on this first page of Attachment B -- I'm</p> <p>15 sorry. I misspoke earlier when I said we were going</p> <p>16 to stick on Page 1 of the Attachment B.</p> <p>17 If you can please go to Page 4 of</p> <p>18 Attachment B. Do you see Page 4 here, Dr. Conti?</p> <p>19 It has a section called "Electronic Data"?</p> <p>20 A I see that.</p> <p>21 Q And it goes over Page 5 for several</p> <p>22 pages after that, correct?</p> <p>23 A Correct.</p> <p>24 Q I just want to confirm you did not</p> <p>25 review any electronic data from either</p>	<p style="text-align: right;">Page 113</p> <p>1 BY MR. CAMPBELL:</p> <p>2 Q And I just want to ask you, Dr. Conti,</p> <p>3 while -- I'll set it up for you while the tech is</p> <p>4 going back. I want to ask you about some of the</p> <p>5 assumptions regarding wholesalers specifically.</p> <p>6 Okay?</p> <p>7 A Okay.</p> <p>8 Q So you say in Paragraph 3 that,</p> <p>9 "Plaintiffs' counsel have also asked me to assume</p> <p>10 that a subset of these at-issue valsartan products</p> <p>11 were sold by defendants AmerisourceBergen Co,</p> <p>12 Cardinal Health and McKesson Co, collectively</p> <p>13 referred to as the defendant wholesalers."</p> <p>14 Do you see that Paragraph 3?</p> <p>15 A I do.</p> <p>16 Q What do you mean in here when you</p> <p>17 wrote the word "subset"?</p> <p>18 A That some of the at-issue products</p> <p>19 were sold to -- in the...</p> <p>20 THE THE COURT REPORTER: I'm sorry.</p> <p>21 In the...</p> <p>22 THE WITNESS: I said the at-issue</p> <p>23 drugs were sold by the manufacturers to these</p> <p>24 specific wholesalers. There were other --</p> <p>25 there are other wholesalers, obviously,</p>

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<p style="text-align: right;">Page 114</p> <p>1 involved in the U.S. market. And at a given</p> <p>2 period in time, manufacturers are going to sell</p> <p>3 specific drugs to specific wholesalers.</p> <p>4 That's what I mean.</p> <p>5 BY MR. CAMPBELL:</p> <p>6 Q And then there were also transactions</p> <p>7 where the manufacturer sold directly to the retail</p> <p>8 pharmacies?</p> <p>9 A Correct.</p> <p>10 Q Were you asked to assume any</p> <p>11 particular percentage of this subset that were sold</p> <p>12 through the wholesalers?</p> <p>13 A I was -- I was not, and that's because</p> <p>14 during the at-issue time period, 2012 through 2018,</p> <p>15 there was very significant asymmetric information.</p> <p>16 And so the contamination of the products was</p> <p>17 not -- was known by the manufacturers, but they were</p> <p>18 not known by other members of the supply chain.</p> <p>19 THE THE COURT REPORTER: Of the...</p> <p>20 THE WITNESS: Supply chain.</p> <p>21 BY MR. CAMPBELL:</p> <p>22 Q Were you told to -- in this case, in</p> <p>23 rendering your opinions in this declaration, were</p> <p>24 you told to assume anything about the wholesalers'</p> <p>25 conduct?</p>	<p style="text-align: right;">Page 116</p> <p>1 MR. HONIK: Object to the form.</p> <p>2 THE WITNESS: Correct. I don't -- I</p> <p>3 don't actually mechanically do any</p> <p>4 calculations. All I'm doing is laying out how</p> <p>5 I would think about calculating unjust</p> <p>6 enrichment in this matter for these specific</p> <p>7 drugs at-issue in this specific period.</p> <p>8 BY MR. CAMPBELL:</p> <p>9 Q In any of the prior cases where you</p> <p>10 have been an expert, have you similarly attempted to</p> <p>11 calculate unjust enrichment damages for wholesalers?</p> <p>12 A Not that I can recall off the top of</p> <p>13 my head.</p> <p>14 MR. CAMPBELL: If I could please ask</p> <p>15 the tech to go to Paragraph 50 of your report.</p> <p>16 BY MR. CAMPBELL:</p> <p>17 Q And, Dr. Conti, please just let me</p> <p>18 know when you're there.</p> <p>19 A Okay.</p> <p>20 Q And I actually want to refer you to</p> <p>21 the second sentence in Paragraph 50, "Given that the</p> <p>22 at-issue valsartan products are small molecule</p> <p>23 orally formulated generic drugs, the majority of</p> <p>24 purchases are made by pharmacies from</p> <p>25 wholesalers/distributors."</p>
<p style="text-align: right;">Page 115</p> <p>1 A Other than what was laid out in the</p> <p>2 complaint and listed in my Paragraphs 1, 2 and 3.</p> <p>3 Q So you are not offering any opinions</p> <p>4 yourself in this declaration about the wholesalers'</p> <p>5 conduct in this case, correct?</p> <p>6 MR. HONIK: Object to the form.</p> <p>7 You can answer.</p> <p>8 THE WITNESS: Correct. Correct. This</p> <p>9 is...</p> <p>10 THE THE COURT REPORTER: Can you</p> <p>11 repeat that, please?</p> <p>12 THE WITNESS: Sure.</p> <p>13 It's on instruction or for -- it's on</p> <p>14 instruction by counsel.</p> <p>15 BY MR. CAMPBELL:</p> <p>16 Q You're not offering any opinions</p> <p>17 whether wholesalers are liable for unjust</p> <p>18 enrichment?</p> <p>19 A I'm not a lawyer, sir, so no. I was</p> <p>20 asked to assume certain details for the purposes of</p> <p>21 my report.</p> <p>22 Q So your opinions, with respect to the</p> <p>23 wholesalers in this case, is limited to essentially</p> <p>24 proposing a formula for calculating unjust</p> <p>25 enrichment damages?</p>	<p style="text-align: right;">Page 117</p> <p>1 Do you see that sentence?</p> <p>2 A Yes.</p> <p>3 Q Why does the fact, as you write here,</p> <p>4 that the at-issue valsartan products are small</p> <p>5 molecule orally formulated generic drugs -- why does</p> <p>6 that mean that the majority of purchases were made</p> <p>7 by pharmacies from wholesalers and distributors?</p> <p>8 A Yeah. So the -- for me, the context</p> <p>9 is important. So the supply chain for specialty</p> <p>10 drugs that are infused or injected can be different.</p> <p>11 And so those products can be handled by different</p> <p>12 distributors or group purchasing organizations.</p> <p>13 Usually, they have different storage requirements,</p> <p>14 and their end consumer is different too. It's</p> <p>15 usually hospitals or outpatient clinics, maybe some</p> <p>16 specialty pharmacies. It's just a -- it's just a</p> <p>17 different supply chain.</p> <p>18 The orally formulated generic drugs</p> <p>19 are the ones that are really are at-issue in this</p> <p>20 matter, and here, they are largely going through the</p> <p>21 distributors, as listed here.</p> <p>22 Q And you just said, "largely." And in</p> <p>23 your report, you say, "majority," but you don't know</p> <p>24 exactly what the percentage is, right?</p> <p>25 A I think in the Deloitte and Touche</p>

30 (Pages 114 - 117)

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<p style="text-align: right;">Page 118</p> <p>1 article, I -- I footnote to this paragraph. It has,</p> <p>2 "A number of distributors handles 92 percent of</p> <p>3 pharmaceutical sales in the U.S. market." And that</p> <p>4 is largely related to orals. It's not related to</p> <p>5 these specialty drugs. If you actually look at the</p> <p>6 backup of the Deloitte paper, the Deloitte paper</p> <p>7 also talks about 11 million prescription units being</p> <p>8 sold each day and handled through the distributors</p> <p>9 at-issue -- such as these in this case.</p> <p>10 Q That article is talking about industry</p> <p>11 wide, right?</p> <p>12 A Industry wide, absolutely.</p> <p>13 Q Okay. So for the at-issue valsartan</p> <p>14 products in this case, you have no idea what the</p> <p>15 percentage is that were sold through the</p> <p>16 wholesalers?</p> <p>17 A Well, so again, in that same footnote,</p> <p>18 Footnote 47, the first paragraph, Mylan and Teva in</p> <p>19 their public reporting talk about total sales going</p> <p>20 through the -- through distributors. Shareholder</p> <p>21 reports specifically report those type of sales in</p> <p>22 aggregate and not for specific drug NDC codes, which</p> <p>23 is really at-issue here. So we know one thing, but</p> <p>24 we don't know at the actual NDC batch lot number</p> <p>25 that we -- we might switch to.</p>	<p style="text-align: right;">Page 120</p> <p>1 the supply chain. Is that correct? Is that what</p> <p>2 you're asking?</p> <p>3 Q Yes, if you could answer that</p> <p>4 question; is that correct?</p> <p>5 A Yes, that is correct.</p> <p>6 Q Okay. All right.</p> <p>7 A Again, as a general matter.</p> <p>8 Q As a general matter. Great.</p> <p>9 So with respect to its role in the</p> <p>10 supply chain, wholesalers are not putting the</p> <p>11 product out into the -- into the consumer market?</p> <p>12 MR. HONIK: Object to the form, may</p> <p>13 call for a legal conclusion.</p> <p>14 You can answer.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 So -- well, I mean, I guess -- I mean,</p> <p>17 they are an important part of the supply chain,</p> <p>18 and wholesalers do take --</p> <p>19 THE COURT REPORTER: They do take</p> <p>20 what?</p> <p>21 THE WITNESS: Do take title from</p> <p>22 manufacturers. They hold those drugs in a</p> <p>23 warehouse, usually, and then hand them off to</p> <p>24 the resale -- to the -- sorry -- to the retail</p> <p>25 pharmacies. Or it might be a little bit of an</p>
<p style="text-align: right;">Page 119</p> <p>1 Q Okay. So for the at-issue valsartan</p> <p>2 products here, we don't know what the percentage is</p> <p>3 that were sold through the wholesaler distributors?</p> <p>4 A Right. We just have these industry</p> <p>5 averages and averages that are specific to the</p> <p>6 manufacturers, not at the NDC code level.</p> <p>7 Q And just to confirm, wholesalers, they</p> <p>8 don't sell these products into the consumer market,</p> <p>9 correct?</p> <p>10 MR. HONIK: Object to the form, it may</p> <p>11 call for a legal conclusion.</p> <p>12 THE WITNESS: I'm sorry. What do you</p> <p>13 mean by that?</p> <p>14 BY MR. CAMPBELL:</p> <p>15 Q I couldn't hear what you said. You</p> <p>16 didn't know what I meant. So what was your</p> <p>17 question?</p> <p>18 A Can you please ask it again? Thank</p> <p>19 you.</p> <p>20 Q Yes. Yes. Just to confirm,</p> <p>21 wholesalers do not sell these products directly to</p> <p>22 patients, correct?</p> <p>23 A Okay. So I think what you mean is</p> <p>24 that, as a general matter, retail pharmacies sell to</p> <p>25 consumers. Wholesalers occupy a different art of</p>	<p style="text-align: right;">Page 121</p> <p>1 accounting mix where they take title, but</p> <p>2 actually, the manufacturers drop ship directly</p> <p>3 from their warehouse to the --</p> <p>4 THE COURT REPORTER: To the what?</p> <p>5 THE WITNESS: To the retail</p> <p>6 pharmacies.</p> <p>7 BY MR. CAMPBELL:</p> <p>8 Q And then it's the retail pharmacies</p> <p>9 that sell to the patients, correct?</p> <p>10 A That's my understanding -- well,</p> <p>11 for -- for products that are sold in the retail</p> <p>12 class of trade. There are -- there are drugs that</p> <p>13 are sold to physicians and hospitals or specialty</p> <p>14 pharmacies -- pharmacies that have a slightly</p> <p>15 different distribution chain. But that's not what</p> <p>16 we're -- that's largely not what we're talking about</p> <p>17 here.</p> <p>18 Q These products at-issue in this case,</p> <p>19 the at-issue valsartan products, were sold by the</p> <p>20 retail pharmacies to the consumers, to patients?</p> <p>21 A Right. So there probably are</p> <p>22 valsartan that were sold -- there are probably</p> <p>23 at-issue valsartan products that were sold to</p> <p>24 hospitals or sold to outpatient clinics for their</p> <p>25 own stocking to take care of patients. But as a</p>

<p style="text-align: right;">Page 122</p> <p>1 mechanical matter, my damage estimation is focused 2 on largely the retail class of trade. 3 I can actually see a cross trade in 4 the IQVIA data, but we're largely focused on the 5 retail class of trade. 6 Q All right. 7 MR. CAMPBELL: If you can -- if the 8 tech can, please, go to Paragraph 80. 9 BY MR. CAMPBELL: 10 Q And -- and if you could go there too, 11 Dr. Conti, please. 12 A Sure. I'm trying to follow. Hold on. 13 Okay. 14 Q All right. And I'm really just going 15 to focus on this first sentence here at 80 where you 16 wrote, "I have also been asked by plaintiffs' 17 counsel to develop a methodology for calculating 18 defendant wholesaler unjust enrichment damages for 19 the at-issue valsartan products." 20 Do you see that? 21 A Yes. 22 Q What is your understanding of unjust 23 enrichment? 24 MR. HONIK: Note my objection to the 25 extent it calls for a legal opinion.</p>	<p style="text-align: right;">Page 124</p> <p>1 damages, are you aware that that might vary from 2 state to state, depending on the state law? 3 MR. HONIK: Note my objection to the 4 extent it calls for a legal opinion. 5 THE WITNESS: Nothing in the U.S. is 6 easy. But basically, I would say, yes. I 7 understand generally that state -- there are 8 state rules related to damage calculations and 9 specifically related to liability and also 10 unjust enrichment. But, again, I'm not a 11 lawyer. I understand these as a mechanical 12 issue. 13 BY MR. CAMPBELL: 14 Q And did your proposed formula for 15 calculating unjust enrichment damages as to 16 wholesalers take into account, in any way, those 17 differences from one state to another? 18 MR. HONIK: Same objection as 19 previously noted. 20 THE WITNESS: So I didn't do this -- I 21 didn't have any data. So I didn't do that at 22 the state level, but I expect if I had the 23 data, this would be limited by state law, 24 according to instructions from counsel for the 25 jury.</p>
<p style="text-align: right;">Page 123</p> <p>1 THE WITNESS: Okay. So, again, I'm 2 not a lawyer. What I view is that the 3 wholesalers took title of these products and 4 then resold them into the retail class of 5 trade. And it's the difference between what 6 they acquire the drugs at -- for -- from when 7 they purchase from the manufacturer to what 8 they received from the retailers when they sold 9 it into the market and the delta that is 10 at-issue here. 11 And later on in this section, I'm a 12 little bit more specific about the profit that 13 is made off -- through the wholesalers moving 14 these products from A to B. 15 BY MR. CAMPBELL: 16 Q Okay. And we'll get to those formulas 17 in just a couple of minutes, as you probably were 18 expecting. 19 Are you aware, when it comes to unjust 20 enrichment, that there are different elements of 21 proof from one state to another for an unjust 22 enrichment claim? 23 A I am generally aware of -- that states 24 have different rules for unjust enrichment. 25 Q And same for the proper measure of</p>	<p style="text-align: right;">Page 125</p> <p>1 THE COURT REPORTER: For what? 2 THE WITNESS: For the jury. From 3 instruction of counsel, the court or the jury. 4 My -- my method is flexible to accommodate 5 those state-specific rules. 6 BY MR. CAMPBELL: 7 Q Have you been given any descriptions 8 of those differences in a law from one state to 9 another so far? 10 MR. HONIK: Note my objection to the 11 extent it may invade the attorney work product 12 privilege and other confidentiality privileges. 13 But with that and without waiver of 14 those objections, I'll allow her to answer. 15 THE WITNESS: Again, I didn't have any 16 data to do this calculation mechanically, so it 17 wasn't really -- it wasn't a detail that I 18 focused on. 19 BY MR. CAMPBELL: 20 Q When you say the detail that you were 21 focused on, you mean a difference between one state 22 versus another state and how the damages are 23 calculated for unjust enrichment? 24 A No. I mean by that, that I didn't 25 mechanically calculate anything for wholesalers.</p>

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1 And so to the extent that unjust enrichment as
 2 applied to the wholesalers in this matter for these
 3 at-issue drugs might differ, I didn't do anything
 4 with that information because I had nothing to do.
 5 I don't have the data to do that based on the state.
 6 That's kind of a different part of the calculation
 7 even for what I did for retailers or for defendants
 8 in the different theories of liability.
 9 Q Can you tell us now how you would
 10 account in you formula for those differences from
 11 one state to another, or is that something that you
 12 would reserve for later?
 13 MR. HONIK: Note my objection to the
 14 extent it calls for a legal conclusion and/or
 15 instruction from judge, jury or counsel.
 16 You may answer.
 17 THE WITNESS: Thank you.
 18 Honestly, I think of it as a
 19 mechanical issue and one that I would wait on
 20 the instruction of counsel, the court or the
 21 jury to -- to do.
 22 BY MR. CAMPBELL:
 23 Q And the formula that you propose for
 24 the unjust enrichment damages is essentially
 25 profits. And that's defined as revenues minus cost

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1 as you have there at the beginning of Paragraph 81,
 2 right?
 3 A Correct.
 4 Q Why did you decide on that being the
 5 formula for unjust enrichment damages? Where did
 6 that come from?
 7 A Because, again, as I understand it,
 8 unjust enrichment is simply the amount of money made
 9 off of the transaction for moving drugs from one
 10 place to another net of cost.
 11 Q Did you rely on any written materials
 12 that told you that was the proper measure of damages
 13 for unjust enrichment?
 14 A I relied on counsel's instruction and
 15 kind of general understanding of what I know of
 16 unjust enrichment.
 17 Q So is counsel's instruction that the
 18 proper calculation of damages for unjust enrichment
 19 is revenues minus cost?
 20 MR. HONIK: Object to the form.
 21 THE WITNESS: Thank you.
 22 I should wait. Yes.
 23 BY MR. CAMPBELL:
 24 Q If you could -- actually, go back real
 25 quick to Paragraph 8 in the -- in your report,

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1 please. And I just want to clarify one thing.
 2 You see in this Paragraph 8,
 3 "Consequently, the appropriate measure of damages in
 4 this matter is the total amount paid by each
 5 plaintiff for the at-issue valsartan products
 6 manufactured and/or sold by the defendants."
 7 Do you see that paragraph?
 8 A Yes.
 9 Q That's not referring to the proper
 10 measure of damages for wholesalers, right?
 11 A Under the theory of unjust enrichment.
 12 THE COURT REPORTER: I'm sorry.
 13 THE WITNESS: Under the theory of
 14 unjust enrichment, correct.
 15 BY MR. CAMPBELL:
 16 Q So this -- what's described in
 17 Paragraph 8 refers to other defendants, not
 18 wholesalers?
 19 A That is correct.
 20 MR. HONIK: Object to form.
 21 I think -- Jamie, did you get the
 22 answer?
 23 THE COURT REPORTER: Yes.
 24 MR. HONIK: Thank you.
 25

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1 BY MR. CAMPBELL:
 2 Q Okay. Back to your calculation of
 3 unjust enrichment damages, so we talked a lot
 4 yesterday about the value of the product or about
 5 the lack of value of the product in -- in your
 6 opinion. I don't want to get into any of that. I
 7 just want to ask one simple question about the value
 8 of the product.
 9 Do you base your calculation of unjust
 10 enrichment damages as to wholesalers on the basic
 11 premise that the products are worthless?
 12 THE COURT REPORTER: That the profits
 13 are worthless?
 14 MR. CAMPBELL: That the products.
 15 THE COURT REPORTER: Thank you.
 16 THE WITNESS: I am -- so in the
 17 wholesaler context, really, all that's at play
 18 here is the wholesalers moved at-issue products
 19 from one place to another. And therefore, they
 20 profited off of that movement.
 21 The full value of the products that
 22 they moved from one place to another is related
 23 to the price that they paid for them over every
 24 unit that they paid for them minus their cost
 25 of acquiring, storing, other --

<p style="text-align: right;">Page 130</p> <p>1 THE COURT REPORTER: Other...</p> <p>2 THE WITNESS: Other offsets that they</p> <p>3 may -- may have experienced.</p> <p>4 So, really, it's just the full price</p> <p>5 that the wholesalers acquired those products at</p> <p>6 minus all of their costs that -- that is -- is</p> <p>7 related to my calculation here.</p> <p>8 BY MR. CAMPBELL:</p> <p>9 Q And so your calculation as to the</p> <p>10 wholesalers for unjust enrichment damages, it</p> <p>11 doesn't matter if the products are -- are worthless</p> <p>12 or not?</p> <p>13 MR. HONIK: Object to the form.</p> <p>14 THE WITNESS: For my purposes, I am --</p> <p>15 I was asked to -- so for my purposes, it's just</p> <p>16 the amount of money that the wholesalers made</p> <p>17 off moving these products from one place to</p> <p>18 another.</p> <p>19 BY MR. CAMPBELL:</p> <p>20 Q Okay.</p> <p>21 MR. CAMPBELL: And if the tech could</p> <p>22 go back to Paragraph 80, and next -- next page</p> <p>23 on Paragraph 80. Okay.</p> <p>24 BY MR. CAMPBELL:</p> <p>25 Q You see the sentence that starts off</p>	<p style="text-align: right;">Page 132</p> <p>1 THE WITNESS: I said correct. I said</p> <p>2 correct. And these are -- I'm sorry. My</p> <p>3 computer wants to reboot. Correct.</p> <p>4 I mean, these are major Fortune 500 or</p> <p>5 Fortune 1,000 companies. They have -- as you</p> <p>6 know, AmerisourceBergen and Cardinal and others</p> <p>7 have revenues, annual revenues, on the order of</p> <p>8 Costco. And these are huge public -- publicly</p> <p>9 traded companies. They must profit off their</p> <p>10 business, or they wouldn't report revenue that</p> <p>11 looks like that. But I have not been shown any</p> <p>12 data to assess exactly how much they -- these</p> <p>13 wholesalers made off of moving from point A to</p> <p>14 point B, the specific issues in this matter.</p> <p>15 THE COURT REPORTER: In what?</p> <p>16 THE WITNESS: The specific drugs in</p> <p>17 this matter.</p> <p>18 THE VIDEOGRAPHER: Counsel, I'm</p> <p>19 getting a lot of background noise. If we can</p> <p>20 just try to reduce that as best as we can.</p> <p>21 Thank you.</p> <p>22 BY MR. CAMPBELL:</p> <p>23 Q All right. And in the next couple of</p> <p>24 sentences in Paragraph 80, you talk about,</p> <p>25 "Wholesalers did not manufacture the products, nor</p>
<p style="text-align: right;">Page 131</p> <p>1 with, "Like the defendant retailers"? We don't have</p> <p>2 the first couple of words, but the first couple</p> <p>3 words highlighted here are "like the"?</p> <p>4 A Yes.</p> <p>5 Q Okay. "Like the defendant retailers,</p> <p>6 these companies profited from the distribution of</p> <p>7 the at-issue valsartan products to pharmacies and</p> <p>8 other entities."</p> <p>9 On what do you base that statement</p> <p>10 there, that these companies profited?</p> <p>11 A Right. So this is just the theory of</p> <p>12 unjust enrichment that as -- so just kind of as a</p> <p>13 general matter, we know that wholesalers move</p> <p>14 drug -- they take title of drugs. And then they</p> <p>15 move them to other purchasers, or they sell them to</p> <p>16 other purchasers. So it's just the difference</p> <p>17 between the -- the amount they sold and the amount</p> <p>18 that they gained that is of issue here.</p> <p>19 Q Okay. So this is the theory. It's</p> <p>20 not based on any actual records or documents that</p> <p>21 you've seen so far?</p> <p>22 MR. HONIK: Object to the form of the</p> <p>23 question.</p> <p>24 THE COURT REPORTER: I'm sorry, I</p> <p>25 didn't hear an answer.</p>	<p style="text-align: right;">Page 133</p> <p>1 did they sell the products to consumers and TPPs."</p> <p>2 And then you say, "Consequently, the</p> <p>3 data that could be used to calculate unjust</p> <p>4 enrichment damages for defendant wholesalers differs</p> <p>5 from that of the defendant retailers described</p> <p>6 above."</p> <p>7 Do you see that sentence?</p> <p>8 A Yes, that's what it says.</p> <p>9 Q Okay. In what ways does the data that</p> <p>10 could be used to calculate unjust enrichment damages</p> <p>11 for wholesalers differ from the retailers?</p> <p>12 A So, again, the -- the wholesalers</p> <p>13 purchased these products at one price and -- in</p> <p>14 aggregate and then sell them at another. It's just</p> <p>15 the delta that matters.</p> <p>16 And the -- the purchase price is going</p> <p>17 to be reported in data just like -- and the products</p> <p>18 themselves, the name of the manufacturers, the lot,</p> <p>19 the batch, the NDC code, all of that should be</p> <p>20 preserved in this data. But the actual cost of</p> <p>21 sales will be -- will be different.</p> <p>22 Q And have you ever seen that sort of</p> <p>23 data for -- for wholesalers other than -- I think</p> <p>24 you mentioned the screen share earlier in the call.</p> <p>25 But have you otherwise ever seen that sort of data</p>

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<p style="text-align: right;">Page 134</p> <p>1 for wholesalers?</p> <p>2 A Yeah. I have seen that data,</p> <p>3 and -- under Track and Trace and earlier versions of</p> <p>4 Track and Trace that are maintained by the states</p> <p>5 through the EPedigree system. My understanding is</p> <p>6 that wholesalers keep track of that data down to the</p> <p>7 unit penny.</p> <p>8 Q And you're referring to the cost of</p> <p>9 the -- you said the cost of the sales earlier. So</p> <p>10 you mean the sale to the retailer?</p> <p>11 A Yeah. And -- and the price that the</p> <p>12 wholesalers are paying to the manufacturers as well.</p> <p>13 So they -- they know how much they're purchasing and</p> <p>14 at what price for what. And they know how much</p> <p>15 they're selling for, by whom, for what, down to the</p> <p>16 retailer level as well.</p> <p>17 Q And I just want to make sure I</p> <p>18 understand. On what is that based, your</p> <p>19 understanding that they -- they know all those</p> <p>20 things?</p> <p>21 A Again -- well, so under Track and</p> <p>22 Trace, they are required -- wholesalers are required</p> <p>23 to keep that information at that level of this</p> <p>24 aggregation, at the NDC manufacturer level and the</p> <p>25 unit level. And then states, on top of Track and</p>	<p style="text-align: right;">Page 136</p> <p>1 enter the retail class of trade in the U.S. has a</p> <p>2 barcode and is -- is traced through the entire</p> <p>3 system. So by definition, if the manufacturers are</p> <p>4 entering these products into the retail class of</p> <p>5 trade, then downstream members of the supply chain,</p> <p>6 whether it be wholesalers or retailers, are required</p> <p>7 to keep track of that product at the barcode level,</p> <p>8 which will contain information about the product,</p> <p>9 the -- the unit and -- and the manufacturers.</p> <p>10 Q What about elements of price? Does it</p> <p>11 track the elements of price?</p> <p>12 A What do you mean by "elements of</p> <p>13 price"?</p> <p>14 Q Well, the amounts received. Let's</p> <p>15 start, first of all, with the revenues.</p> <p>16 A Sure.</p> <p>17 Q Okay? Which is -- let's go to that</p> <p>18 part of your formula about the revenues, and that's</p> <p>19 in Paragraph 82.</p> <p>20 A Yeah.</p> <p>21 Q Okay.</p> <p>22 A I have that.</p> <p>23 Q All right. And it -- it says</p> <p>24 wholesaler revenue can be expressed in Formula 10 as</p> <p>25 Qdt multiplied by PPUdt. Do you see that?</p>
<p style="text-align: right;">Page 135</p> <p>1 Trace, have EPedigree systems that require all</p> <p>2 members of the supply chain in the United States to</p> <p>3 maintain units sold or purchased, which types of</p> <p>4 drugs by which types of manufacturers to ensure that</p> <p>5 they are not counterfeit.</p> <p>6 Q Have you ever had any specific</p> <p>7 conversations with someone who works for a</p> <p>8 wholesaler about the input needed to calculate</p> <p>9 profits on any given transaction or -- or drug?</p> <p>10 A I mean -- this field is awash in data,</p> <p>11 and I am aware that wholesalers are keeping track of</p> <p>12 their unit costs and their unit --</p> <p>13 THE COURT REPORTER: Their unit what?</p> <p>14 THE WITNESS: Or their revenues</p> <p>15 for -- for each transaction that they are going</p> <p>16 through every single day. Again, 11 million</p> <p>17 prescriptions units a day are going through the</p> <p>18 wholesalers in the U.S. market.</p> <p>19 BY MR. CAMPBELL:</p> <p>20 Q Have you ever had any specific</p> <p>21 conversations with any of the wholesalers in this</p> <p>22 case, employees of the wholesalers in this case,</p> <p>23 that they are keeping that sort of data regarding</p> <p>24 the at-issue valsartan?</p> <p>25 A Again, any product that is allowed to</p>	<p style="text-align: right;">Page 137</p> <p>1 A Yes.</p> <p>2 Q Did you consider any other inputs in</p> <p>3 determining revenue here for -- with respect to</p> <p>4 wholesalers?</p> <p>5 A Like what?</p> <p>6 Q Well, that's what I'm asking you. I'm</p> <p>7 asking you.</p> <p>8 A I don't -- I don't understand.</p> <p>9 Q Sure.</p> <p>10 You have QDt --</p> <p>11 A Right.</p> <p>12 Q -- and PPUdt as the two inputs that</p> <p>13 you multiply together to get revenue, right?</p> <p>14 A Right.</p> <p>15 Q Okay. Did you consider any other</p> <p>16 things to multiply or include in this part of the</p> <p>17 formula that you decided should not be included?</p> <p>18 A This is a general formula. So it is</p> <p>19 inclusive of the aggregate units and the transaction</p> <p>20 prices for these units. Transaction prices could</p> <p>21 be -- are probably expressed in aggregate over</p> <p>22 products. And there may be a difference between</p> <p>23 gross prices paid and net prices paid. There might</p> <p>24 be offsets, return of goods, et cetera, that</p> <p>25 are -- that are part of either the revenue or part</p>

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<p style="text-align: right;">Page 138</p> <p>1 of the cost.</p> <p>2 Q And how does that factor into your</p> <p>3 formula here?</p> <p>4 A It's inclusive.</p> <p>5 Q In what way?</p> <p>6 A And you can -- well, you can see</p> <p>7 in -- in Footnote 75, when calculating profit,</p> <p>8 offset may be removed from gross profit, so the jury</p> <p>9 or court find these to be reasonable deductions.</p> <p>10 These additional costs can be easily included.</p> <p>11 THE COURT REPORTER: Can be easily...</p> <p>12 THE WITNESS: Included.</p> <p>13 BY MR. CAMPBELL:</p> <p>14 Q So your Paragraph 75 there, is that</p> <p>15 referring to -- for example, if we start with inputs</p> <p>16 to revenue, does that include rebates?</p> <p>17 A It could. It could, yes. So there's</p> <p>18 a gross price, and then there's returned goods.</p> <p>19 There's rebates that might be paid on aggregate</p> <p>20 purchased products or sold products. All of those</p> <p>21 would be considered, not gross revenue or not gross</p> <p>22 prices, but net prices and could be a part of those</p> <p>23 calculations if counsel or the court or the jury</p> <p>24 find that they should be included.</p> <p>25 Q Do you have an opinion on whether they</p>	<p style="text-align: right;">Page 140</p> <p>1 those inclusions if the court or the jury or</p> <p>2 counsel determined they should be included.</p> <p>3 BY MR. CAMPBELL:</p> <p>4 Q Hypothetically, if a wholesaler came</p> <p>5 to you and asked you to help them calculate profits</p> <p>6 on a particular set of drugs outside the context of</p> <p>7 any litigation, would you include rebates in that</p> <p>8 calculation of profits?</p> <p>9 MR. HONIK: Note my objection,</p> <p>10 improper hypothetical.</p> <p>11 THE WITNESS: Okay. I think we've all</p> <p>12 established how much I love hypothetical</p> <p>13 questions, and I think the answer to this one</p> <p>14 is just, it depends. It depends on the</p> <p>15 context.</p> <p>16 BY MR. CAMPBELL:</p> <p>17 Q So in some context, you would include</p> <p>18 rebates?</p> <p>19 THE COURT REPORTER: I'm sorry, can</p> <p>20 you repeat that question?</p> <p>21 MR. CAMPBELL: Sure.</p> <p>22 BY MR. CAMPBELL:</p> <p>23 Q In some context, you would include</p> <p>24 rebates in the calculation of revenues?</p> <p>25 MR. HONIK: Object to the form of the</p>
<p style="text-align: right;">Page 139</p> <p>1 should be included?</p> <p>2 MR. HONIK: Note my objection to the</p> <p>3 extent it calls for a legal conclusion.</p> <p>4 THE WITNESS: My method and the</p> <p>5 formula that's listed here is -- is general.</p> <p>6 BY MR. CAMPBELL:</p> <p>7 Q And I'm not asking you in a legal</p> <p>8 opinion. I'm asking you as the expert health</p> <p>9 economist here. If you were calculating profits for</p> <p>10 a particular set of drugs for a wholesaler, would</p> <p>11 you factor in rebates?</p> <p>12 MR. HONIK: Note my objection. The</p> <p>13 ultimate answer to the question requires,</p> <p>14 respectfully, a legal determination, one that's</p> <p>15 beyond the scope.</p> <p>16 But with that, she can answer the</p> <p>17 question.</p> <p>18 THE WITNESS: Thank you.</p> <p>19 So, again, I'm not a lawyer. I'm an</p> <p>20 economist. I would say if I didn't think that</p> <p>21 they -- that those factors should be</p> <p>22 considered, I would not have dropped the</p> <p>23 footnote that I did. We were just talking</p> <p>24 about Footnote 75. And, again, the method that</p> <p>25 is proposed is -- is flexible to accommodate</p>	<p style="text-align: right;">Page 141</p> <p>1 question.</p> <p>2 THE WITNESS: And you mean profits?</p> <p>3 BY MR. CAMPBELL:</p> <p>4 Q Profits, sure.</p> <p>5 A Possibly.</p> <p>6 Q And with respect to rebates, do you</p> <p>7 understand that different customers have different</p> <p>8 rebate structures? I should say different</p> <p>9 wholesaler customers have different rebate</p> <p>10 structures?</p> <p>11 A What do you mean by "customers"?</p> <p>12 Q Sure.</p> <p>13 So one particular customer for a</p> <p>14 wholesaler might have a rebate structure that has</p> <p>15 these numbers or these incentives. And another</p> <p>16 customer for that same wholesaler might have a</p> <p>17 totally different rebate structure.</p> <p>18 MR. HONIK: Object to the form.</p> <p>19 THE WITNESS: I think I'm asking a</p> <p>20 much more basic question, which is who is the</p> <p>21 customer.</p> <p>22 BY MR. CAMPBELL:</p> <p>23 Q It doesn't matter. Let's say --</p> <p>24 A Customer of whom?</p> <p>25 THE COURT REPORTER: I'm sorry?</p>

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1 MR. CAMPBELL: I'm sorry.
2 THE WITNESS: Let's start from the
3 beginning. Customer of whom?
4 BY MR. CAMPBELL:
5 Q Yeah. A wholesaler customer.
6 A Okay. So is that the manufacturer?
7 So remember, wholesalers operate a two-sided market.
8 So they are -- they have manufacturers that they are
9 purchasing products from. That is one type of
10 customer.
11 And then they are selling downstream
12 to other customers that are retail pharmacies and
13 other members of the supply chain. So that's
14 another type of customer. So I'm asking you which
15 customer.
16 Q Okay. So now I'm in the category of
17 revenues, so I'm talking about the downstream
18 customers.
19 A Okay. Great.
20 Q Okay. The -- the retail pharmacies,
21 pick any two that you want to for the wholesalers.
22 Do you understand that different customers,
23 different retail or pharmacy customers, might have
24 different rebate structures?
25 A So as a general matter, I understand

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1 that these contracts may include rebates that are
2 generally paid in aggregate and are contracted to an
3 advance of any specific transaction. So they're
4 contracts that cover a period prospectively.
5 If -- whether they differ materially
6 from each other, I -- I think that they may differ
7 in time. In other words, the contracting that
8 occurs in 2020 as a general rule looks different
9 than the contracting that might have occurred in
10 2012. But if a differ -- I mean, AmerisourceBergen
11 and Cardinal, they're really major players in this
12 market. And they have significant market power. So
13 I'm assuming that they have a pretty uniform
14 contract that they are -- they have for signing with
15 their downstream customers, the retailers.
16 Q So your assumption is that, for
17 example, for Cardinal Health, its contracts are
18 going to look the same with respect to rebates with
19 its retailer customers, no matter who the retailer
20 customer is?
21 MR. HONIK: Object to the form.
22 That's not her testimony.
23 THE WITNESS: No -- yeah, I think
24 you're mischaracterizing my testimony. What
25 I'm saying is that AmerisourceBergen, Cardinal,

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<p style="text-align: right;">Page 146</p> <p>1 BY MR. CAMPBELL:</p> <p>2 Q Did you review any wholesaler and</p> <p>3 retailer contracts produced in this litigation?</p> <p>4 A No, not in this matter, but I have</p> <p>5 seen contracts between wholesalers and retail</p> <p>6 pharmacies in the course of business.</p> <p>7 Q Any related to the products at-issue</p> <p>8 in this litigation?</p> <p>9 A No. But, again, these are</p> <p>10 really -- these are, you know, cheap generic drugs.</p> <p>11 The -- and so I don't expect them to differ that</p> <p>12 much or to be special in any way. Where I have seen</p> <p>13 carve out or special considerations are for products</p> <p>14 that have very special types of handling or shelf</p> <p>15 life.</p> <p>16 Q And going to your formula for cost,</p> <p>17 which is at the bottom of Page 33, it's Formula 11.</p> <p>18 Well, one thing I wanted to --</p> <p>19 A Hold on. Hold on. Let me just get</p> <p>20 there.</p> <p>21 Q One thing before I continue on that,</p> <p>22 one of the elements of your formulas is -- is the</p> <p>23 concept of unit, correct?</p> <p>24 A Yes.</p> <p>25 Q All right. What is your definition</p>	<p style="text-align: right;">Page 148</p> <p>1 Q Okay. So let me go to your formula</p> <p>2 for cost. For the formula for cost, Formula 11, I</p> <p>3 guess it is. It continues on to the top of the next</p> <p>4 page. In this part of your formula for cost, did</p> <p>5 you consider including charge backs?</p> <p>6 A Again, this is what I mean by,</p> <p>7 in -- in that Footnote 75, that there could be</p> <p>8 offsets to profit that could be considered, either</p> <p>9 in the cost side or in the revenue side.</p> <p>10 I think I have already mentioned</p> <p>11 charge backs as being an offset in the -- in our</p> <p>12 earlier conversation. They may be related here or</p> <p>13 important.</p> <p>14 Q And you would say the same thing for</p> <p>15 rebates?</p> <p>16 A Again, I think of volume discounted as</p> <p>17 being a more relevant term, but there might also be</p> <p>18 rebates there.</p> <p>19 Q You mentioned discounts. You're</p> <p>20 aware --</p> <p>21 A Wait a minute. I'm sorry. Just a</p> <p>22 minute. Just to finish my thought.</p> <p>23 Again, I didn't do this mechanically.</p> <p>24 I didn't have any data to do that, and so my method</p> <p>25 that's being proposed here is general. And it's</p>
<p style="text-align: right;">Page 147</p> <p>1 for -- for unit here in this formula for</p> <p>2 wholesalers?</p> <p>3 A Yeah, it's -- it's quantity. It's</p> <p>4 quantity, and usually at the wholesaler level,</p> <p>5 they'll be -- it will be bottles or packages of</p> <p>6 pills. But it might also be aggregated over larger</p> <p>7 units, so, like, multiple pill packs or multiple</p> <p>8 boxes of products.</p> <p>9 Q So a unit can be a different size,</p> <p>10 basically?</p> <p>11 A Units can be different sizes, and the</p> <p>12 size and the aggregate amounts contained in those</p> <p>13 units are things that the wholesaler knows and keeps</p> <p>14 track of. It's part of the requirements of Track</p> <p>15 and Trace and also the EPedigree system that I</p> <p>16 mentioned earlier.</p> <p>17 Q Does your formula account for the</p> <p>18 differences in sizes between units?</p> <p>19 A Yes. And if I -- again, this</p> <p>20 is -- this is a theoretical exercise. I have no</p> <p>21 data. But I tend to be very anal about units sizes,</p> <p>22 and so this would be done at a unit that may -- at</p> <p>23 the most disaggregated unit that was appropriate.</p> <p>24 And usually units for cost would match the units for</p> <p>25 revenues, if I was doing this with data.</p>	<p style="text-align: right;">Page 149</p> <p>1 really a different phase of the case, either upon</p> <p>2 the instruction of counsel and upon of the</p> <p>3 instruction from the court or jury, that those type</p> <p>4 of offsets, if they exist, either for cost or for</p> <p>5 revenue.</p> <p>6 Q But you would defer to the court or</p> <p>7 the jury to decide whether those sorts of things</p> <p>8 should be included?</p> <p>9 A Correct.</p> <p>10 Q And with the same -- you mentioned</p> <p>11 discounts. Would the same thing apply, for example,</p> <p>12 on the cost side, logistics fees or service fees?</p> <p>13 A For unjust enrichment calculations,</p> <p>14 yes, that -- those also could potentially be</p> <p>15 accounted for. My method is flexible to account for</p> <p>16 them, again, upon the instruction of counsel, the</p> <p>17 court or the jury.</p> <p>18 Q What about non-product-related costs,</p> <p>19 for example, wholesaler overhead or employee costs</p> <p>20 or IT costs, those sorts of things? Are those also</p> <p>21 included in the offsets that you would defer to</p> <p>22 whether the court or the jury says they should be</p> <p>23 counted?</p> <p>24 A I think of all of these things -- so</p> <p>25 to the extent that they're all related to cost of</p>

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<p style="text-align: right;">Page 150</p> <p>1 goods, they would be related. Usually, I've seen 2 cost of goods break out those type of costs 3 separately. 4 Q Employee costs, information technology 5 costs, store costs, those sort of things? 6 A I mean there's -- they're -- they're 7 huge. They're so big. You know, they're their own 8 separate line items. They're -- they have their own 9 department that -- that accrues those costs and 10 accounts for those costs and that keeps track of 11 those costs and reports them to their shareholders. 12 I've -- I've used those as different cost of goods 13 for the unit being moved from one place to another. 14 Usually, that -- in gap accounting, they're 15 accounted for separately. 16 Q Okay. And then on the other inputs 17 for the costs, of all the things that you said, 18 maybe offsets, and you would defer to the court or 19 the jury to decide whether they're -- they're 20 counted. Those also will, or could, vary from 21 manufacturer to manufacturer depending on the 22 contract, right? 23 A Okay. So I think we're switching. So 24 I think what you mean is that -- so now the customer 25 is the upstream customer to the wholesaler, right?</p>	<p style="text-align: right;">Page 152</p> <p>1 secrets in my general understanding of -- of how 2 this world works. I -- I wish I could see them, but 3 I haven't seen them in -- in -- in this matter. And 4 I have asked lots of questions of my wholesaler 5 friends about, kind of, generally how these work, 6 but I have never seen a contract. 7 Q And do you agree that wholesalers 8 typically negotiate with the manufacturers when 9 they're entering into one of these contracts over a 10 bundle of goods and not with any one particular type 11 of product? 12 A I mean, it depends on who the 13 wholesale -- I mean, it depends on who the 14 manufacturer is, right, and what the products are. 15 But -- so I do not -- I don't know the specifics of 16 the contracts between the wholesaler and the 17 specific manufacturers in this case. 18 Q Okay. And I think you already 19 mentioned when you talked about the concept of time, 20 but it's your understanding that the contracts, both 21 types of contracts, the contracts between the 22 wholesalers and the manufacturers, and then the 23 wholesalers and the retail pharmacies, those 24 contracts can change over time, correct? 25 A Yes. Typically, wholesalers would</p>
<p style="text-align: right;">Page 151</p> <p>1 It's the manufacturer? 2 Q That's right? 3 A Is that right? 4 Q Yes. 5 A Okay. So, again, same general gist, 6 which is wholesalers are method in terms of revenue 7 and in terms of market share relative to each 8 individual pharmaceutical company that they're 9 dealing with. And so for the contract between 10 AmerisourceBergen, for example, and any specific 11 small generic manufacturer, the entity that holds 12 the bargaining power is the wholesaler, not 13 generally the -- the manufacturer. 14 So, again, I expect, just as a manner 15 of management, that the wholesalers here can dictate 16 the terms of purchase to these upstream 17 manufacturers, and they might differ a little bit by 18 time, by type of product, et cetera. But I don't 19 anticipate that within time and for a particular 20 type of product, there -- there to be very 21 significant differences. 22 Q Did you review any of the contracts 23 between the wholesalers and the manufacturers that 24 were produced in this case? 25 A No. Those are very closely held</p>	<p style="text-align: right;">Page 153</p> <p>1 contract upstream and downstream prospectively, and 2 those contracts will have a term. So they'll be 3 for -- prospectively, for a year, two years. 4 Q And the terms may vary from 5 manufacturer to manufacturer or from retail pharmacy 6 to retail pharmacy? 7 MR. HONIK: Objection, asked and 8 answered. 9 THE WITNESS: So, again, you're -- if 10 you're a Fortune 1,000 company, such as these 11 in the U.S., they tend to be pretty routinized, 12 and also it's important to be routinized for 13 the principles of gap reporting for 14 shareholders. Again, these are public 15 companies. So -- 16 THE COURT REPORTER: They're to be 17 routinized? 18 THE WITNESS: Routinized. 19 THE COURT REPORTER: Routinized? 20 THE WITNESS: Yes. 21 THE COURT REPORTER: Okay. 22 THE WITNESS: Routinized. 23 But as a general matter, my 24 understanding is that the contracts are for a 25 year or two, both upstream and downstream.</p>

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1 MR. HONIK: And let me -- let me just
2 note that it's the 1 o'clock hour. I think we
3 had a hard stop at this time, but to the extent
4 y'all need more time, I think Dr. Conti will
5 make herself available at 4 p.m.
6 THE WITNESS: Yeah, I apologize. I'm
7 actually late to meet my Dean. That's not a
8 good -- that's not a good look for me.
9 MR. HONIK: Let's go off the record
10 and release the witness for now, and counsel
11 can confer.
12 THE VIDEOGRAPHER: The time is 1 p.m.
13 This ends Media Unit Number 3. We're going off
14 the record.
15 (Whereupon, a break was taken from
16 1 p.m. to 4 p.m.)
17 THE VIDEOGRAPHER: The time is 4:03.
18 This begins Media Unit Number 4. We're back on
19 the record.
20 BY MR. ABRAHAM:
21 Q Good afternoon, Dr. Conti.
22 A Good afternoon.
23 Q My name is Eric Abraham -- Hetero Labs
24 and Hetero Drugs. Can you hear me? You're
25 making --

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1 A No, I can't -- you just cut out again.
2 MR. HONIK: You briefly cut out, Eric.
3 Keep going. Let's see how it goes. We'll let
4 you know if it's a problem.
5 BY MR. ABRAHAM:
6 Q Okay. Let's make sure we get the
7 important point. I represent Hetero Drugs and
8 Hetero Labs, and I'm going to be taking just a few
9 additional questions today. All right?
10 Do you still have your report in front
11 of you?
12 THE WITNESS: I'm sorry. Does
13 everyone hear the background noise? It's very
14 significant. There's -- it's like a computer
15 noise.
16 THE VIDEOGRAPHER: The time is 4:04.
17 We're going off the record.
18 (Whereupon, a discussion was held off
19 the record.)
20 THE VIDEOGRAPHER: The time is 4:05.
21 We're back on the record.
22 BY MR. ABRAHAM:
23 Q Good afternoon, Dr. Conti. My name is
24 Eric Abraham from law firm Hill Wallack, and I
25 represent Hetero Labs and Hetero Drugs. I have just

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1 a few questions for you.
2 Do you still have your expert report
3 in front of you?
4 A I do.
5 Q Okay. I'd would like to draw your
6 attention, please, to Paragraph 60.
7 A Just give me one second.
8 Q It's on Page 23. Do you have it?
9 A Just one minute.
10 Q Okay.
11 A Yeah. Okay. I'm there.
12 Q Okay. And this -- in this, you
13 express the formula or the methodology for
14 calculating liability damages as -- effectively,
15 quantity as of the date and time for a particular
16 product over time period, times the price for that
17 product over the same time period; is that correct?
18 A Correct.
19 Q Okay. And I believe that you
20 testified earlier today that, for Hetero, you
21 confined your damages analysis to prescriptions that
22 were filled between May and August of 2018, correct?
23 A That's correct.
24 Q Okay. And that's consistent with
25 Footnote 67 of your report, right?

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1 A Just give me one second. I have to
2 double check. Yes, that's correct.
3 Q Did you do any investigation to
4 determine whether any of Hetero's valsartan was sold
5 within that timeframe, May through August of 2018,
6 that did not contain an alleged nitrosamine
7 impurity?
8 A I did not, and that's because my
9 analysis is prospective and under the assumption
10 that consumers and third-party payors could not tell
11 whether a product was contaminated or not -- or
12 could not tell whether a product was contaminated or
13 not with the nitrosamines and other potential
14 products.
15 Q So is it fair to say that you assumed,
16 for purposes of your analysis, that if a
17 prescription was filled within that timeframe, May
18 through August 2018, the valsartan contained the
19 nitrosamine impurity?
20 MR. HONIK: Object to form.
21 THE WITNESS: Right. So, again, and
22 as I write this -- I write in my report, there
23 is fundamental asymmetric information in this
24 market. In other words, while the manufacturer
25 might know the extent of the contamination of

<p style="text-align: right;">Page 158</p> <p>1 their products, consumers nor third-party</p> <p>2 payors knew of at the time that they were</p> <p>3 making --</p> <p>4 THE COURT REPORTER: That they were</p> <p>5 making...</p> <p>6 THE WITNESS: At the time that they</p> <p>7 were making those purchases. And therefore,</p> <p>8 because my perspective is prospective, I'm</p> <p>9 doing the analysis from the -- from the</p> <p>10 perspective that -- of them and their</p> <p>11 asymmetric information. I am counting all</p> <p>12 products that were available for sale and</p> <p>13 ultimately sold in the U.S. market. That does</p> <p>14 not count -- that does not take into account</p> <p>15 that there may have been different levels of</p> <p>16 contamination that the manufacturer might have</p> <p>17 known about their own product.</p> <p>18 BY MR. ABRAHAM:</p> <p>19 Q Okay. So to the extent that there may</p> <p>20 have been valsartan manufactured by Hetero without</p> <p>21 the impurity that was still sitting on the shelf at</p> <p>22 the pharmacy in the May to August timeframe, those</p> <p>23 sales would be included with -- in your damages</p> <p>24 analysis, correct?</p> <p>25 A Correct. At --</p>	<p style="text-align: right;">Page 160</p> <p>1 both end-payor and consumer damages, attributable to</p> <p>2 the Hetero Labs. Do you see that?</p> <p>3 A I do.</p> <p>4 Q Does that calculation follow the</p> <p>5 formula that we talked about a few moments ago? It</p> <p>6 was on Paragraph 60 of your report, in other words,</p> <p>7 quantity times price?</p> <p>8 A Quantity times price, correct of all</p> <p>9 products in that time period that are relevant for</p> <p>10 that specific set of NDCs.</p> <p>11 Q Tell me what the quantity of pills you</p> <p>12 used was for the Hetero Labs end-payor damages</p> <p>13 calculation that resulted in roughly [REDACTED] in</p> <p>14 damages?</p> <p>15 A Sure. Sales --</p> <p>16 Q No, just a number. What was the</p> <p>17 number?</p> <p>18 A So sales of the product as recorded in</p> <p>19 the IQVIA data in the relevant time period among</p> <p>20 consumers that were -- among payors -- among</p> <p>21 prescriptions that were dispensed and paid for by</p> <p>22 third-party payors.</p> <p>23 Q I may not have been clear. I would</p> <p>24 like to know what the number was that you used for</p> <p>25 quantity within your equation.</p>
<p style="text-align: right;">Page 159</p> <p>1 Q I --</p> <p>2 A Wait. At this point in time --</p> <p>3 Q Right. I have very limited time,</p> <p>4 Dr. Conti.</p> <p>5 A No. No. No. I understand. I just</p> <p>6 need to -- but it's --</p> <p>7 Q You've answered my question.</p> <p>8 MR. HONIK: No, she hasn't. She</p> <p>9 hasn't finished her answer.</p> <p>10 THE WITNESS: So, again, from my</p> <p>11 perspective, at this point in time, my</p> <p>12 assignment was to think about damages in a</p> <p>13 prospective way from the consumer and</p> <p>14 third-party payors' perspective. They did not</p> <p>15 know whether the products that were being sold</p> <p>16 and consumed by themselves or paid for by</p> <p>17 themselves were contaminated or not, even if</p> <p>18 the manufacturer did know.</p> <p>19 BY MR. ABRAHAM:</p> <p>20 Q Can you please turn to Table 1 of your</p> <p>21 report?</p> <p>22 A Yes.</p> <p>23 Q It's on Page 31.</p> <p>24 A Yeah.</p> <p>25 Q And you see you have a line here for</p>	<p style="text-align: right;">Page 161</p> <p>1 A So I don't have it in my report, but</p> <p>2 it is easily discernable in the data that I have.</p> <p>3 I'm more than happy to provide that to you.</p> <p>4 Q Please do. I'll ask your counsel to</p> <p>5 provide me with that number.</p> <p>6 And what was the price that you used</p> <p>7 to calculate the [REDACTED] number for end-payor</p> <p>8 damages?</p> <p>9 A Same -- same answer, it was the price</p> <p>10 that was paid by end-payors recorded in IQVIA data,</p> <p>11 according to the inclusion/exclusion criteria for</p> <p>12 the specific products that are Hetero -- that are</p> <p>13 assigned to Hetero Labs.</p> <p>14 BY MR. ABRAHAM:</p> <p>15 Q But I would like to know what the</p> <p>16 number was. Are you saying you don't know right now</p> <p>17 what that number was?</p> <p>18 A I just said it's the same answer to</p> <p>19 the question, which is -- by definition, it is price</p> <p>20 times quantity that you're seeing here. And that --</p> <p>21 the native price recorded in the IQVIA data for each</p> <p>22 product, month, year and payor is available in the</p> <p>23 IQVIA data. And I'm more than happy to provide it</p> <p>24 to you.</p> <p>25 Q Okay. So same questions for consumer</p>

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1 damages, in other words, you would have to look back
2 at some data to tell me what the quantity was and
3 what the price was that you multiplied to come up
4 with your [REDACTED]
5 A Right, subject to the criteria of
6 inclusion and exclusion, and subject to the
7 methodology as outlined in my report, by definition,
8 these quantities represent actual quantities and
9 prices that were paid by consumers among the
10 at-issue drugs in the at-issue time period for the
11 at-issue payors.
12 Q Right.
13 THE COURT REPORTER: I'm sorry, the
14 at-issue...
15 THE WITNESS: Payors.
16 THE COURT REPORTER: Thank you.
17 THE WITNESS: The prices for
18 consumers.
19 BY MR. ABRAHAM:
20 Q But, Dr. Conti, I just want to make
21 sure, there's no place I can look in your report
22 that would tell me what the price and quantity
23 numbers are that you used for those two
24 calculations; is that fair?
25 A Well, what we're providing -- what I'm

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1 providing in my report is the conjunction, price
2 times quantity. I'm more than happy to provide you
3 the -- I think what you're asking for is what is the
4 native price and quantity for each -- for Hetero
5 underlying the consumer damages listed here. And,
6 again, it's in my data. I'm more than happy to
7 provide it to you.
8 Q Thank you.
9 MR. ABRAHAM: I'll make that request,
10 please, of your counsel, to provide me with the
11 quantity and price that went into your
12 end-payor damages and consumer damages
13 calculations. I appreciate that.
14 BY MR. ABRAHAM:
15 Q Do you know the quantity of Hetero's
16 valsartan that was recalled as a result of the
17 allegedly impure nature of the pills?
18 A No. And, again, it was of no moment
19 in my analysis because -- because of the significant
20 asymmetric information and the perspective of my
21 analysis, which was prospectively from the consumer
22 and third-party payors' perspective. They had no
23 ability to know which products were recalled versus
24 which ones were not -- or which ones were
25 contaminated versus which ones were not,

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1 prospectively.
2 Q Does your damages analysis address in
3 any way the impact of the recall upon damages to
4 either the end-payor or consumer classes?
5 A Just in terms of the time period that
6 was used.
7 Q Okay. Do you know who Hetero's U.S.
8 repackager or distributor was in the chain of
9 comments?
10 A Not off the top of my head, no.
11 Q Okay. Do you know what payments, if
12 any, were made by that repackager or distributor --
13 THE COURT REPORTER: I'm sorry, can
14 you repeat that? Can you repeat that?
15 MR. ABRAHAM: Sure.
16 BY MR. ABRAHAM:
17 Q Do you know what payments, if any,
18 were made by the repackager or distributor of
19 Hetero's product to any party in the chain of
20 distribution as a result of the recall?
21 A I'm sorry, I don't completely
22 understand. What do you mean -- do you mean
23 distributor of the wholesale distributor, just to be
24 specific?
25 Q Let's take -- let's take that example.

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1 A Yeah. Okay. So -- and are you asking
2 about payments that Hetero made to their distributor
3 or --
4 Q I mean --
5 A -- to other --
6 THE COURT REPORTER: Okay. I cannot
7 -- I can't have you both speaking at one time.
8 It's too fast, and I can't do it.
9 MR. ABRAHAM: Sorry. My fault.
10 BY THE WITNESS:
11 Q I mean, not necessarily payments made
12 by Hetero's manufacturer, but made by Hetero's
13 United States repackager or distributor.
14 A So do you mean that there were --
15 there were refunds that were made by the distributor
16 to consumers or to third-party payors for recalled
17 products?
18 Q That's a fair hypothetical. So in
19 other words, yes. Did you, in any way in your
20 damages analysis, consider if those had occurred and
21 what the impact would be in your damages
22 calculation?
23 A So, again, my -- my damage calculation
24 is flexible and could accommodate the possibility of
25 refunds that were made for recalled or contaminated

<p style="text-align: right;">Page 166</p> <p>1 product to end-payors. I did not have that data for 2 this analysis that I conducted. My understanding is 3 that whether or not that would be ultimately 4 included in damages for settlement purposes, that is 5 something that would be settled by counsel, court or 6 the judge.</p> <p>7 Q Okay. Did your damages analysis in 8 any way address the charge backs, rebates, bill 9 backs, administrative fees or cash discounts 10 attributable to sales of Hetero's valsartan that was 11 allegedly contaminated or unpure as a result of the 12 nitrosamine?</p> <p>13 A That's a really compound question. So 14 let's take that apart.</p> <p>15 So if discounts were given to 16 consumers at the point of sale, then by definition, 17 they are included in my damages because they would 18 offset the actual payment that patients made at the 19 pharmacy counter. And that would be included in the 20 IQVIA data that's listed in my report.</p> <p>21 Q Did you analysis -- I'm sorry. Go 22 ahead. I didn't mean to interrupt.</p> <p>23 A No. It's okay.</p> <p>24 We don't have rebate data. That is 25 something that is confidential and available from</p>	<p style="text-align: right;">Page 168</p> <p>1 witness. Thank you very much for your time.</p> <p>2 MR. HONIK: Eric, but for the benefit 3 of the record, I just would like to note that 4 the backup data that you asked of Dr. Conti 5 that pertains to Hetero and Table 1, the 6 aggregate of damages, was provided to you and 7 all defense counsel concomitantly with our 8 serving our class cert motion and brief. So if 9 you'll do nothing more than look at the files 10 that we served, you'll find the data points 11 that you're looking for there.</p> <p>12 MR. ABRAHAM: Let's have this 13 discussion offline. I don't want to consume 14 the doctor's time.</p> <p>15 MR. HONIK: Understood. I wanted the 16 record to reflect that it's already been served 17 on counsel.</p> <p>18 Next -- next up?</p> <p>19 MR. KNEPPER: Yes. This is 20 Matthew Knepper from Husch Blackwell. I will 21 go next.</p> <p>22 THE WITNESS: I'm sorry. From where?</p> <p>23 MR. KNEPPER: Husch Blackwell. I 24 represent Express Scripts.</p> <p>25 THE WITNESS: -- as the pharmacy, just</p>
<p style="text-align: right;">Page 167</p> <p>1 the manufacturers themselves. From a theory of 2 liability, rebates are not necessarily things that 3 would be considered to be offsets, because injury 4 occurs at the point of sale, and rebates are paid 5 after the products are sold at some other point in 6 time in aggregate and may not be directly related to 7 any specific transaction.</p> <p>8 But to the extent that Hetero or their 9 agents negotiated prices with third-party payors, 10 that varied by product, they would be in the IQVIA 11 data. Because, by definition, the IQVIA data is 12 providing the price that was actually paid by the 13 third-party at the pharmacy counter for those 14 products.</p> <p>15 So if discounts were given, if Hetero 16 gave discounts to, I don't know, let's say, take one 17 of the third-party payors in this case, 18 prospectively, that would be in my calculation -- in 19 the damages that are calculated here.</p> <p>20 THE COURT REPORTER: And what?</p> <p>21 THE WITNESS: That would be in the 22 damages that are calculated here.</p> <p>23 MR. ABRAHAM: Okay. Subject to 24 receiving the information that you agreed to 25 provide, I have no further questions for the</p>	<p style="text-align: right;">Page 169</p> <p>1 so I understand.</p> <p>2 THE COURT REPORTER: I'm sorry?</p> <p>3 THE WITNESS: I can't hear you.</p> <p>4 THE COURT REPORTER: What was your 5 last question to Mr. Knepper?</p> <p>6 THE WITNESS: As the pharmacy benefit 7 manager or as the mail order pharmacy?</p> <p>8 MR. KNEPPER: As the pharmacy -- the 9 defendant in this case.</p> <p>10 THE WITNESS: Thank you so much for 11 that clarification.</p> <p>12 BY MR. KNEPPER:</p> <p>13 Q So I'd like to turn to Page 32 in your 14 report, Table 3. This is "Aggregate Retailer Unjust 15 Enrichment Damages." Dr. Conti, the dollar figures 16 reflected in Table 3 for unjust enrichment damages 17 represent your calculation of the profits each 18 pharmacy defendant had from the sale of at-issue 19 valsartan, right?</p> <p>20 A Correct.</p> <p>21 Q These dollar figures actually reflect 22 the retail pharmacies' profits if the pharmacies 23 obtained the drug for free, right?</p> <p>24 A No.</p> <p>25 MR. HONIK: Object to form.</p>

<p style="text-align: right;">Page 170</p> <p>1 BY MR. KNEPPER:</p> <p>2 Q Can you show me where in your</p> <p>3 report -- well, let me strike that.</p> <p>4 Earlier, we talked about dispensing</p> <p>5 fees and how those were removed from -- you said</p> <p>6 removed from the dispensing data produced from the</p> <p>7 retail pharmacies, right?</p> <p>8 THE COURT REPORTER: From the what?</p> <p>9 MR. KNEPPER: From the retail</p> <p>10 pharmacies' data.</p> <p>11 THE WITNESS: Earlier when, sir?</p> <p>12 BY MR. KNEPPER:</p> <p>13 Q Earlier in the deposition when you</p> <p>14 were talking to Ms. Kapke.</p> <p>15 A Sorry, who's Ms. Kathy?</p> <p>16 Q Ms. Kapke, Kara, who questioned you</p> <p>17 this morning.</p> <p>18 A You mean for CVS?</p> <p>19 Q Correct.</p> <p>20 A I am following you now. Thank you for</p> <p>21 the clarification.</p> <p>22 Q Okay. You said that you removed or --</p> <p>23 or took into account the fact that what you called</p> <p>24 dispensing fees were not included in the data that</p> <p>25 was provided by the retail pharmacy defendants in</p>	<p style="text-align: right;">Page 172</p> <p>1 MR. HONIK: Object to the form.</p> <p>2 THE WITNESS: That is of no moment in</p> <p>3 my analysis, sir.</p> <p>4 MR. KNEPPER: Okay. Let's go to</p> <p>5 Paragraph 64, if we could.</p> <p>6 BY MR. KNEPPER:</p> <p>7 Q Okay. Before I ask about</p> <p>8 Paragraph 64, in your experience in this industry,</p> <p>9 would you agree that, before a pharmacy can dispense</p> <p>10 a medication, it has to purchase either a finished</p> <p>11 dose or the active ingredient?</p> <p>12 A Well, most pharmacies, in my</p> <p>13 understanding, have significant stores of</p> <p>14 prescription drugs already available for dispensing.</p> <p>15 Walgreens, for example, and CVS is moving millions</p> <p>16 of prescriptions per day through the U.S. supply</p> <p>17 chain. So those things are not stocked in an</p> <p>18 instantaneous way. They are stocked in a warehouse</p> <p>19 and ready to be dispensed immediately when consumers</p> <p>20 come, especially among generic drugs as frequently</p> <p>21 used as the ones at-issue here.</p> <p>22 Q All right. Is it your understanding</p> <p>23 that the medication that you just referenced, stored</p> <p>24 in Walgreens' warehouse, had to be at one time</p> <p>25 purchased by Walgreens and stored in that warehouse?</p>
<p style="text-align: right;">Page 171</p> <p>1 this case. Do you remember that?</p> <p>2 A That's not what I said, sir. That's a</p> <p>3 mischaracterization of my testimony.</p> <p>4 Q Well, we will go -- I'm not -- I'm not</p> <p>5 trying to be controversial. We can go to page -- or</p> <p>6 Paragraph 78 of the report?</p> <p>7 A No. I mean, why don't we just go to</p> <p>8 the methodology for calculation of unjust enrichment</p> <p>9 in --</p> <p>10 Q Let's go to Page 78 first.</p> <p>11 A -- Paragraph 64 --</p> <p>12 Q Let's go to Paragraph 78.</p> <p>13 THE COURT REPORTER: I can't do this.</p> <p>14 THE WITNESS: In Paragraph 64, where I</p> <p>15 explain that -- that dispensing fees to</p> <p>16 consumers were removed from the calculation,</p> <p>17 the retailer unjust enrichment claims that were</p> <p>18 enumerated by -- offset by pharmacies in</p> <p>19 Table 3.</p> <p>20 BY MR. KNEPPER:</p> <p>21 Q Okay. Other than the statement that</p> <p>22 the -- the dispensing fees were removed, where in</p> <p>23 your report are you taking into account the fact</p> <p>24 that these pharmacies had to pay for the medication</p> <p>25 before they dispensed it.</p>	<p style="text-align: right;">Page 173</p> <p>1 A How is that in any moment to me, sir?</p> <p>2 Q Is that a yes? I need to know. Do</p> <p>3 you agree that Walgreens would have to purchase the</p> <p>4 drug, or do you believe that they get it for free?</p> <p>5 A It's not something, sir, that I</p> <p>6 considered -- it's not in my report. Nowhere do I</p> <p>7 talk about the purchasing of these products by these</p> <p>8 retail pharmacies, because that is not of moment.</p> <p>9 The only thing that is of moment to my</p> <p>10 analysis is that injury occurred at the point of</p> <p>11 sale, and the only cost at the point of sale that is</p> <p>12 relevant is the dispensing fee, which you, the</p> <p>13 retailer, has already taken out of the data. So by</p> <p>14 definition, you have already -- you have already</p> <p>15 said that, yes, that is the cost to you for each</p> <p>16 individual prescription that you moved out of your</p> <p>17 store. You took it out.</p> <p>18 Q Okay. I'm going to move forward.</p> <p>19 This is not my line of questioning.</p> <p>20 Paragraph 63 that you referenced and</p> <p>21 64, Paragraph 63 says, "Retailers profited from the</p> <p>22 sale of the at-issue valsartan," all right? And</p> <p>23 profits are defined as revenue minus costs.</p> <p>24 And so what I'm asking you about is</p> <p>25 how you calculated the profit that is contained in</p>

<p style="text-align: right;">Page 174</p> <p>1 Table 3. And what I understand --</p> <p>2 A I --</p> <p>3 Q I'm not done with my question.</p> <p>4 What I understand is that you took the</p> <p>5 revenue that was reflected as being paid by -- the</p> <p>6 patient responsibility, and you added that up by</p> <p>7 state. And then you note that the dispensing fee is</p> <p>8 not present, but unless you're going to tell me</p> <p>9 there's some other data about the cost to acquire</p> <p>10 the data that you can speak of the drugs that you</p> <p>11 considered, I don't see where you considered the</p> <p>12 cost of purchasing the drug. So can you explain</p> <p>13 where that is in your report?</p> <p>14 MR. HONIK: Object -- hold on a</p> <p>15 second.</p> <p>16 Object to form. Asked and answered.</p> <p>17 You may answer.</p> <p>18 THE WITNESS: Thank you.</p> <p>19 The retail pharmacies subtracted the</p> <p>20 fee, their costs for dispensing the product at</p> <p>21 the point of sale. From their --</p> <p>22 Q I'm not talking about --</p> <p>23 MR. HONIK: You cannot interrupt --</p> <p>24 you cannot interrupt the witness.</p> <p>25 MR. KNEPPER: I'm limited on time.</p>	<p style="text-align: right;">Page 176</p> <p>1 answered.</p> <p>2 THE WITNESS: Sir, I'm going to use</p> <p>3 the -- I'm going to walk you through this as</p> <p>4 best as I possibly can, and simply, so I think</p> <p>5 it will be very clear.</p> <p>6 We asked the pharmacies what their</p> <p>7 profits were, the revenue from the products</p> <p>8 that they sold and their cost. Each retailer</p> <p>9 provided us with only the revenues they</p> <p>10 received from consumer payments, not the amount</p> <p>11 of money that they received from the</p> <p>12 third-party payors, which by definition, would</p> <p>13 be larger than the consumers in this case.</p> <p>14 Instead, the retailers limited the</p> <p>15 data that they produced to just the payments</p> <p>16 that the consumers paid in the form of</p> <p>17 co-insurance and co-payments. The retailers</p> <p>18 also only provided to us information about</p> <p>19 that -- the cost that they viewed as being</p> <p>20 relevant were the dispensing costs.</p> <p>21 BY MR. KNEPPER:</p> <p>22 Q I thought you said that --</p> <p>23 A Excuse me. Hold on, please, sir.</p> <p>24 Please let me finish.</p> <p>25 Q That was a long pause.</p>
<p style="text-align: right;">Page 175</p> <p>1 MR. HONIK: In doesn't matter.</p> <p>2 MR. KNEPPER: She is answering a</p> <p>3 question I am not asking.</p> <p>4 MR. HONIK: You're not permitted to</p> <p>5 cut off the witness. If you -- we can stop the</p> <p>6 deposition. That's up to you, but you can't --</p> <p>7 you can't prevent her from answering.</p> <p>8 MR. KNEPPER: Proceed.</p> <p>9 THE WITNESS: Can you please read back</p> <p>10 the question?</p> <p>11 MR. KNEPPER: I'm going to ask you a</p> <p>12 different one.</p> <p>13 BY MR. KNEPPER:</p> <p>14 Q Can you cite --</p> <p>15 MR. HONIK: Are you withdrawing the</p> <p>16 question?</p> <p>17 MR. KNEPPER: I'm withdrawing the</p> <p>18 question.</p> <p>19 MR. HONIK: Thank you.</p> <p>20 BY MR. KNEPPER:</p> <p>21 Q Can you cite any piece of literature</p> <p>22 to support your idea that one can calculate retail</p> <p>23 pharmacy profits without including, as a cost, the</p> <p>24 pharmacy's cost from actually procuring the goods?</p> <p>25 MR. HONIK: Objection, asked and</p>	<p style="text-align: right;">Page 177</p> <p>1 A Therefore -- therefore, I calculated</p> <p>2 the profits as a function of revenue minus cost,</p> <p>3 where the retailers only provided the payments that</p> <p>4 were made by consumers minus the costs that they</p> <p>5 provided, that they consented to were -- that were</p> <p>6 the dispensing costs. From my perspective, those</p> <p>7 are the costs of dispensing a prescription to an</p> <p>8 individual patient.</p> <p>9 Q So can you point to a treatise that</p> <p>10 supports the idea that you can calculate retail</p> <p>11 pharmacy profits without including a cost of -- that</p> <p>12 the pharmacy spent to procure the goods? Can you</p> <p>13 point to that treatise?</p> <p>14 A This is the retailers' data. It's</p> <p>15 on -- it's on the retailers to provide a treatise to</p> <p>16 support their subtraction of -- or accounting of</p> <p>17 only the dispensing cost. It's not on me. Injury</p> <p>18 occurs at the point of sale. So it's the only thing</p> <p>19 that matters at the point of sale.</p> <p>20 Q To calculate profit?</p> <p>21 A From the retailers' own perspective.</p> <p>22 That is not -- has nothing to do with my</p> <p>23 perspective. That is the retailers' data that was</p> <p>24 provided to me.</p> <p>25 Q All right. The --</p>

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1 THE COURT REPORTER: I'm sorry?

2 MR. KNEPPER: I was talking to myself.

3 Withdraw that. Or strike it.

4 BY MR. KNEPPER:

5 Q I'm going to take it that, sitting

6 here today, you are not going to name a piece of

7 literature or treatise that will support the idea

8 that you can calculate the -- the profits of a

9 pharmacy if you don't include the amount of money

10 that the pharmacy spent procuring the goods?

11 MR. HONIK: Object to form. It's been

12 asked and answered. It's painfully clear that

13 you don't understand, and I -- I -- she can't

14 answer it any differently.

15 MR. KNEPPER: Okay. Then we'll move

16 on. I withdraw the question. I withdraw the

17 question.

18 THE WITNESS: I don't --

19 MR. KNEPPER: I'm withdrawing the

20 question.

21 THE COURT REPORTER: I can't hear

22 anybody. I hear nobody.

23 THE WITNESS: I don't -- are you

24 withdrawing the question and striking the

25 question? Because I'm more than happy to

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1 answer your question.

2 BY MR. KNEPPER:

3 Q No, I'm going to withdraw.

4 I feel like if there was a treatise

5 available, or treatise or an article or piece of

6 literature to support it, you would have named it.

7 I'm going to move forward.

8 MR. HONIK: Move to strike. That's

9 not a -- excuse me. That's not a question.

10 You can't testify.

11 MR. KNEPPER: Got it.

12 BY MR. KNEPPER:

13 Q You understand that a dispensing fee

14 is typically set by a pharmacy benefit manager as

15 part of a pharmacy being in that pharmacy benefit

16 manager's network, right?

17 MR. HONIK: Objection, asked and

18 answered.

19 THE WITNESS: That is not my

20 answer -- that is not my understanding, sir.

21 There are many, many transactions here that

22 have nothing to do with the existence of a

23 pharmacy benefit manager.

24 BY MR. KNEPPER:

25 Q I asked about the setting of a

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1 dispensing. I believe earlier you testified --

2 A No, that's not --

3 Q I'm not done asking my question.

4 Earlier, you testified that a pharmacy

5 sets the dispensing fee. And I want to clarify my

6 understanding as -- in this industry is that

7 typically, the dispensing fee is set by a PBM as

8 part of the network agreement. Is that true?

9 A That is not my understanding because

10 there are many, many dispensing prescription drugs

11 that have nothing to do with a pharmacy benefit

12 manager.

13 Q I don't understand that answer.

14 MR. HONIK: Are you just going to make

15 comments and speak to yourself and create a

16 record?

17 MR. KNEPPER: Is that an objection?

18 THE WITNESS: That's what you're

19 doing.

20 MR. HONIK: That's what you're doing.

21 You're just -- it's like a color commentary to

22 the testimony. You're here and permitted to

23 ask a question and receive an answer. That's

24 it. You're not supposed to -- you know, reveal

25 your own befuddlement at the answers.

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1 BY MR. KNEPPER:

2 Q Under the -- you went -- in order to

3 calculate your damages model, I believe earlier you

4 said you tallied up the total amount of patient

5 responsibilities by state. And then you put on the

6 charts other and attached it to your report, right?

7 That's how you got to the full amount of damages?

8 A I don't understand your question.

9 MR. HONIK: Object to form.

10 BY MR. KNEPPER:

11 Q Are you aware that in some

12 circumstances a pharmacy might end up actually being

13 reimbursed less than the amount it paid to acquire a

14 drug?

15 MR. HONIK: Object to form, asked and

16 answered.

17 You can respond.

18 THE WITNESS: I don't understand the

19 question, sir.

20 BY MR. KNEPPER:

21 Q Are you aware as an -- as someone who

22 is familiar with the industry and these

23 circumstances, which -- because of the reimbursement

24 that is offered by a third-party payor otherwise,

25 that a pharmacy may end up receiving less than the

<p style="text-align: right;">Page 182</p> <p>1 amount indicated in the expense to acquire the drug?</p> <p>2 MR. HONIK: Object to the form, asked</p> <p>3 and answered. Are you referring to pre- and</p> <p>4 post-point of sale transactions?</p> <p>5 MR. KNEPPER: I mean, I'm asking the</p> <p>6 question.</p> <p>7 MR. HONIK: She answered you. She</p> <p>8 said she doesn't --</p> <p>9 MR. KNEPPER: No, you answered it.</p> <p>10 MR. HONIK: No, I didn't answer it.</p> <p>11 MR. KNEPPER: You answered another</p> <p>12 question.</p> <p>13 MR. HONIK: She didn't understand your</p> <p>14 question. I'm trying -- I'm trying to help</p> <p>15 you.</p> <p>16 MR. KNEPPER: I'm going to stop.</p> <p>17 MR. HONIK: Okay.</p> <p>18 MR. OSTFELD: I think that means I'm</p> <p>19 up.</p> <p>20 EXAMINATION BY MR. OSTFELD:</p> <p>21 Q Good afternoon, Doctor.</p> <p>22 THE COURT REPORTER: Hold on. Who's</p> <p>23 going next?</p> <p>24 MR. OSTFELD: This is Greg Ostfeld --</p> <p>25 THE COURT REPORTER: Hold on.</p>	<p style="text-align: right;">Page 184</p> <p>1 manufacturers like Teva, did you make any</p> <p>2 adjustments to account for differences in different</p> <p>3 states, measures and damages?</p> <p>4 MR. HONIK: Note my objection, asked</p> <p>5 and answered. And to the extent it calls for a</p> <p>6 legal conclusion, I further object.</p> <p>7 But you may answer.</p> <p>8 THE WITNESS: We have already talked</p> <p>9 about this numerous times. So the theories of</p> <p>10 liability and unjust enrichment are by</p> <p>11 definition state specific. And therefore, the</p> <p>12 calculations are, for each of the damage</p> <p>13 calculations that are presented in my report,</p> <p>14 are month, year, product and state specific.</p> <p>15 BY MR. OSTFELD:</p> <p>16 Q Okay. And those calculations are</p> <p>17 agnostic with respect to the state law measure of</p> <p>18 damage for each state, correct?</p> <p>19 MR. HONIK: Object to the form, asked</p> <p>20 and answered.</p> <p>21 THE WITNESS: Again, my understanding</p> <p>22 is that they are based on instruction from</p> <p>23 counsel.</p> <p>24 BY MR. OSTFELD:</p> <p>25 Q Okay. So when you get instructions</p>
<p style="text-align: right;">Page 183</p> <p>1 MR. OSTFELD: -- from Greenberg</p> <p>2 Traurig.</p> <p>3 THE WITNESS: I'm sorry, I'd like to</p> <p>4 take a break. I'll take five minutes, please.</p> <p>5 MR. HONIK: Okay.</p> <p>6 THE VIDEOGRAPHER: The time is 4:34.</p> <p>7 We're going off the record.</p> <p>8 (Whereupon, a short break was taken.)</p> <p>9 THE VIDEOGRAPHER: The time is 4:40.</p> <p>10 We're back on the record.</p> <p>11 BY MR. OSTFELD:</p> <p>12 Q Good afternoon, Dr. Conti. My name's</p> <p>13 Greg Ostfeld. And I represent the Teva group of</p> <p>14 defendants, which includes both Teva and Actavis.</p> <p>15 The good news is you're almost done.</p> <p>16 So --</p> <p>17 A I hope you don't yell at me like the</p> <p>18 previous attorney, or bully me.</p> <p>19 Q I'm not a yeller, Dr. Conti.</p> <p>20 A That sounds good.</p> <p>21 Q I mean, if we can try to be nice to</p> <p>22 each other for the last 15 minutes, we can end on an</p> <p>23 upbeat note going into the weekend.</p> <p>24 A Okay.</p> <p>25 Q When you calculated damages for</p>	<p style="text-align: right;">Page 185</p> <p>1 from counsel, the court or a jury, that would be</p> <p>2 when you would make adjustments to account for</p> <p>3 state-specific differences?</p> <p>4 MR. HONIK: Object to form.</p> <p>5 THE WITNESS: I think I'm a little</p> <p>6 confused.</p> <p>7 What I'm saying is, my damage</p> <p>8 calculations that are presented in this report</p> <p>9 are already adjusted for state-specific issues.</p> <p>10 And there might be additional adjustments that</p> <p>11 are made. My method is flexible to account for</p> <p>12 them and would be up to the court or the jury</p> <p>13 to decide.</p> <p>14 BY MR. OSTFELD:</p> <p>15 Q All right. In my client's case, you</p> <p>16 calculated separate damages for their generic</p> <p>17 versions of Diovan and Exforge; is that right?</p> <p>18 THE COURT REPORTER: Diovan and -- I'm</p> <p>19 sorry.</p> <p>20 MR. OSTFELD: Exforge.</p> <p>21 THE COURT REPORTER: Yes. Uh-huh.</p> <p>22 THE WITNESS: That is my</p> <p>23 understanding, yes.</p> <p>24 BY MR. OSTFELD:</p> <p>25 Q Okay. Now, the brand-name versions of</p>

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<p style="text-align: right;">Page 186</p> <p>1 those two drugs, those were not adulterated or</p> <p>2 misbranded under the assumptions you've applied to</p> <p>3 your method, correct?</p> <p>4 MR. HONIK: Object to the form.</p> <p>5 THE WITNESS: I don't understand. I'm</p> <p>6 sorry.</p> <p>7 BY MR. OSTFELD:</p> <p>8 Q That's okay. You were not asked to</p> <p>9 assume that brand-name Diovan was adulterated or</p> <p>10 misbranded for purposes of your analysis of this</p> <p>11 case, correct?</p> <p>12 A So the products that are at issue are</p> <p>13 enumerated in Footnote 3 and discussed in -- at</p> <p>14 length in the complaint. The attorneys, the</p> <p>15 counsel, gave me the NDC codes and the month, years</p> <p>16 at issue. And that's what was applied to the data</p> <p>17 that I got from IQVIA or to the retailers as we've</p> <p>18 already discussed at length.</p> <p>19 Q Okay. And you have not applied the</p> <p>20 assumptions of adulteration or misbranding to any</p> <p>21 other forms of valsartan beyond those that</p> <p>22 were -- that you just described that are delineated</p> <p>23 in your footnote and that were provided to you by</p> <p>24 counsel by NDC code?</p> <p>25 MR. HONIK: Object to form.</p>	<p style="text-align: right;">Page 188</p> <p>1 different assumption from the assumption that you</p> <p>2 made in preparing your analysis in this case.</p> <p>3 Plaintiffs' counsel asked you to make one</p> <p>4 assumption, I'm going to now ask you to make a</p> <p>5 different one.</p> <p>6 I will ask you to assume, for the</p> <p>7 purposes of my next few questions -- and I know you</p> <p>8 don't love hypotheticals. But we're talking about</p> <p>9 assumptions here, so I'm going to have to ask you to</p> <p>10 make a few.</p> <p>11 So I will ask you to assume, for</p> <p>12 purposes of my next questions, that some</p> <p>13 manufacturers' versions of generic valsartan were</p> <p>14 not adulterated and/or not misbranded. Okay?</p> <p>15 That's the assumption I'm asking you to make. The</p> <p>16 question is coming.</p> <p>17 A In what time period, sir?</p> <p>18 Q During the same time period that the</p> <p>19 at-issue valsartan was being sold.</p> <p>20 A Okay. And they were in the retail</p> <p>21 profit trade in the U.S.?</p> <p>22 Q Yes.</p> <p>23 A And their non-contamination was known</p> <p>24 by the manufacturer and also communicated to the</p> <p>25 FDA?</p>
<p style="text-align: right;">Page 187</p> <p>1 THE WITNESS: Again, counsel provided</p> <p>2 me the list of NDC codes. We picked up a</p> <p>3 number of additional NDC codes that were</p> <p>4 repackaged or private-labeled but were related</p> <p>5 to the upstream at-issue products, and then</p> <p>6 applied that forward to the calculation.</p> <p>7 BY MR. OSTFELD:</p> <p>8 Q All right. During the same time</p> <p>9 period that the at-issue valsartan was sold, did</p> <p>10 brand-name Diovan have a legitimate supply curve?</p> <p>11 A Again, my opinion related to the</p> <p>12 legitimate supply curve is related to the products</p> <p>13 at-issue.</p> <p>14 Q Right. And that's all I'm asking you.</p> <p>15 For one of the products that's not at issue,</p> <p>16 brand-name Diovan, did it have a legitimate supply</p> <p>17 curve?</p> <p>18 MR. HONIK: Object to the form. It's</p> <p>19 been asked and answered, and it's beyond the</p> <p>20 scope.</p> <p>21 You may respond.</p> <p>22 THE WITNESS: Yeah. I don't quite</p> <p>23 understand your question. I'm sorry.</p> <p>24 BY MR. OSTFELD:</p> <p>25 Q Okay. I'm going to ask you to make a</p>	<p style="text-align: right;">Page 189</p> <p>1 Q That -- sure. We can make that</p> <p>2 assumption as well.</p> <p>3 A And it was also asserted to or</p> <p>4 attested to by those manufacturers to the</p> <p>5 Food and Drug Administration and the downstream</p> <p>6 consumers?</p> <p>7 Q That they were not adulterated and not</p> <p>8 misbranded, yes. You can make that assumption as</p> <p>9 well.</p> <p>10 A Great. And those attestations were</p> <p>11 not incorrect, in fact?</p> <p>12 Q That is -- that is the assumption I'm</p> <p>13 asking to you make, yes.</p> <p>14 A Okay. Just trying to understand</p> <p>15 exactly what contours of the hypothetical are.</p> <p>16 Q Absolutely. I like that you are</p> <p>17 precise, and I want to make sure you have a good set</p> <p>18 of assumptions. So you're comfortable with those</p> <p>19 assumptions?</p> <p>20 MR. HONIK: Object to the form.</p> <p>21 THE WITNESS: I'll let you know if I</p> <p>22 have other questions.</p> <p>23 BY MR. OSTFELD:</p> <p>24 Q Okay. Using the assumptions that</p> <p>25 we've just agreed to, would it be your opinion that</p>

<p style="text-align: right;">Page 190</p> <p>1 there was a legitimate supply curve for 2 non-adulterated, non-misbranded, generic valsartan 3 drugs, applying all of the assumptions you just 4 made? 5 A Yes, from a -- from a prospective form 6 perspective, if the products were not adulterated, 7 not misbranded and -- and were cGMP compliant in 8 their material production, and met all of the rest 9 of the FDA requirements, safety, efficacy, purity, 10 et cetera, then yes, correct. They would be a -- 11 there is a legitimate supply curve for those 12 products. 13 Q And would that apply retrospectively, 14 as well, to the products that were already sold and 15 ingested? 16 A No. 17 Q And why not? 18 A Because my analysis is a prospective 19 one, not a retrospective one. 20 Q Understood. 21 So your analysis could not apply 22 retrospectively. Understood. 23 A No. That's not what I said, sir. 24 That's not my testimony. 25 Q Okay. That's okay. I'll move on.</p>	<p style="text-align: right;">Page 192</p> <p>1 payors? 2 A I just asked you about the condition 3 of asymmetric information. If -- if consumers and 4 third-party payors, plus the regulator, all knew the 5 exact same information that the manufacturer did 6 regarding the purity, strength, adulteration or 7 non-adulteration, non-misbranding, et cetera, if the 8 product was exactly what it said it was or what was 9 represented, and every consumer and third-party 10 payor had full transparency over that, then, yes, 11 prospectively, that would make absolute sense that 12 there was full economic value. 13 Q Okay. 14 A We, of course, don't live in a world 15 of full information. 16 Q Okay. I understand that you have 17 relied on the allegations of the complaint 18 referenced in Footnote 1 in the first paragraph of 19 your report as the basis for your assumption of 20 adulteration and misbranding; is that correct? 21 A I'm sorry. There's a -- there's 22 numerous things that you said in that sentence, 23 so -- 24 Q Okay. I guess what I'm trying to -- 25 I'm not asking to you repeat testimony, but I want</p>
<p style="text-align: right;">Page 191</p> <p>1 Under the same changed assumptions 2 that we just agreed to, would you agree that 3 non-adulterated, non-misbranded, generic valsartan 4 drugs have economic value as well as therapeutic 5 value? 6 MR. HONIK: Object to the form. 7 THE WITNESS: I have no opinion on 8 therapeutic value. It was not of any moment in 9 my analysis because therapeutic value is -- is 10 related to the demand curve. And I'm not 11 analyzing the demand curve here. I'm focused 12 on the supply curve. 13 BY MR. OSTFELD: 14 Q Okay. I'll exclude therapeutic value 15 from my question. 16 Under the same assumptions that we 17 just agreed to, would you agree that 18 non-adulterated, non-misbranded generic valsartan 19 drugs have economic value? 20 A In -- where there was no asymmetric 21 information? 22 Q Correct. 23 A Yes. 24 Q And that economic value was true -- 25 would be true of both consumers and third-party</p>	<p style="text-align: right;">Page 193</p> <p>1 to make sure I accurately understand your earlier 2 testimony. 3 I think I understood you earlier to 4 testify that the basis for your assumption that the 5 at-issue valsartan was adulterated and misbranded, 6 is what is contained in the complaint in this case; 7 is that correct? 8 MR. HONIK: Object to form, 9 mischaracterizes the testimony. You can 10 respond. 11 THE WITNESS: As instructed by counsel 12 and laid out in my report, yes. 13 THE COURT REPORTER: I'm sorry. I've 14 been instructed by counsel... 15 MR. HONIK: As instructed. 16 THE WITNESS: As instructed by counsel 17 and laid out in my report. 18 THE COURT REPORTER: Thank you. 19 BY MR. OSTFELD: 20 Q Other than the complaint, is there any 21 other basis on which you have relied for your 22 assumption that the at-issue valsartan of my 23 clients, Teva, was adulterated and misbranded? 24 MR. HONIK: Object to form, asked and 25 answered.</p>

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1 THE WITNESS: Well, I think we've
2 already talked about this, that the FDA had
3 very -- there was a lot of communications about
4 the products at-issue and the contamination,
5 which includes discussions of the contamination
6 and the recall for the Teva-specific products.
7 BY MR. OSTFELD:
8 Q Do you have any personal knowledge of
9 whether Teva's valsartan was adulterated or
10 misbranded?
11 A Define "personal knowledge," sir.
12 Q Is it your opinion that Teva violated
13 good -- current good manufacturing practices?
14 MR. HONIK: Object to form.
15 THE WITNESS: I mean, we talked about
16 this earlier. I'd be more than happy to go
17 through what the FDA said. It's --
18 THE COURT REPORTER: I'm sorry. What
19 was just said?
20 MR. OSTFELD: Guys, somebody needs to
21 mute.
22 MR. HONIK: It's Eric Abraham.
23 THE COURT REPORTER: Okay. So we
24 talked about this earlier. I'm more than happy
25 to go through what the FDA said...

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1 BY MR. OSTFELD:
2 Q Doctor, I'll withdraw my question. I
3 see that I'm running short on time, and there's one
4 more topic I wanted to cover.
5 MR. HONIK: I think there's only a
6 minute or so left.
7 MR. OSTFELD: I think 2:45 is what
8 I've got on my timer.
9 BY MR. OSTFELD:
10 Q You told Mr. Goldberg yesterday that
11 you wrote your declaration in this case. Did you
12 write the entire declaration?
13 A I'm sorry, is that a compound
14 question?
15 Q No. I'm asking, did you write your
16 entire declaration in this case? It's one question.
17 A Are you asking me about what I said to
18 Mr. Goldberg?
19 Q I'm asking you a separate question.
20 Did you write your entire declaration in this case?
21 A I wrote my declaration in this case.
22 Q Did anyone else draft any --
23 A Hold on. With the assistance of my
24 staff.
25 Q All right. Is your declaration in

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1 this case an original document that you prepared
2 specifically for this case?
3 MR. HONIK: Object to form. What do
4 you mean by "original"?
5 THE WITNESS: Yeah. I don't
6 understand what that means.
7 BY MR. OSTFELD:
8 Q Are there any parts of your
9 declaration in this case that you copied or adapted
10 from another report in your case?
11 A What other case?
12 Q I'm asking you. Are there any parts
13 of your declaration in this case that you copied or
14 adapted from an earlier report in another case?
15 A I'm asking you to be specific, sir.
16 Q Any case, any report in any other
17 case.
18 A I mean, I'm happy to go through and
19 look. Certainly, there are parts of my
20 qualifications that are pretty standard. So if we
21 can go through -- so we go -- I'm answering your
22 question, sir.
23 Q I'm not asking you to go through your
24 report. I'm asking --
25 A I have asked you for specifics several

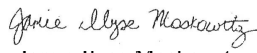
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1 times. You --
2 Q All right. Well, I'm going to
3 withdraw my question.
4 A -- and now I'm going to try to answer
5 it.
6 Q I'm going to withdraw my question, and
7 ask you a more specific question.
8 You previously prepared an expert
9 report in Blue Cross Blue Shield Association versus
10 GlaxoSmithKline?
11 A I'm sorry, what case is that, sir?
12 Q Blue Cross Blue Shield Association
13 versus GlaxoSmithKline.
14 A Can you refer to me in my CV which
15 case that is?
16 Q Did you copy or adapt portions of your
17 expert report in this case from your report in
18 Blue Cross Blue Shield Association versus
19 GlaxoSmithKline?
20 A I'm asking you which specific case is
21 that. Can you point to me in my CV or in my
22 declaration what case that is?
23 MR. HONIK: Excuse me. Or
24 alternatively, show the witness the other
25 document, and she will compare it and answer

<p style="text-align: right;">Page 198</p> <p>1 your question, either way.</p> <p>2 BY MR. OSTFELD:</p> <p>3 Q That is the name of the case in your</p> <p>4 CV, ma'am.</p> <p>5 A Okay. So show me where it is in my</p> <p>6 CV.</p> <p>7 Q I don't have your CV in front of me,</p> <p>8 but let me pull it up.</p> <p>9 A Okay.</p> <p>10 Q If you look on Page 5 of your CV, the</p> <p>11 second to last --</p> <p>12 A Give me a second to get there.</p> <p>13 Page 5. Okay. So there are multiple reports, June,</p> <p>14 August, September 2018. Blue Cross Blue Shield</p> <p>15 Association et al. versus GlaxoSmithKline. Is that</p> <p>16 the one you're talking about?</p> <p>17 Q That is the case that I'm talking</p> <p>18 about.</p> <p>19 A And it says, "Written reports," with</p> <p>20 an S, "and deposition," correct?</p> <p>21 Q Correct.</p> <p>22 A Okay. So as I mentioned before,</p> <p>23 before you interrupted me, my qualifications don't</p> <p>24 change much. So I'm assuming if we go to Page 4 of 24</p> <p>25 this report, of the current report, I expect that</p>	<p style="text-align: right;">Page 200</p> <p>1 also provided in my CV.</p> <p>2 17 probably hasn't changed so much.</p> <p>3 18 definitely has changed. 19 may or may not</p> <p>4 be in that report. Then we can go through the</p> <p>5 institutional background on the regulation.</p> <p>6 BY MR. OSTFELD:</p> <p>7 Q Okay.</p> <p>8 A So that other case was also a cGMP</p> <p>9 case, and many of the institutions are obviously the</p> <p>10 same. Probably, there is overlap.</p> <p>11 Q To complete this exercise, would it be</p> <p>12 helpful to you if I put the other report in so you</p> <p>13 can compare them side-by-side?</p> <p>14 A I mean, there are actually multiple</p> <p>15 reports, and there's a deposition. So which -- I'd</p> <p>16 like to see them all.</p> <p>17 Q Well, I only have one, but I'll put it</p> <p>18 on the screen. And if you --</p> <p>19 A I'm sorry. If you're going to provide</p> <p>20 new information to me and ask me to compare and</p> <p>21 contrast and go through, then I'd like to see them</p> <p>22 all.</p> <p>23 Q Dr. Conti, I only have one. I can</p> <p>24 only give you what I have.</p> <p>25 A Then I think -- then I think that we</p>
<p style="text-align: right;">Page 199</p> <p>1 Paragraph 12 and probably Paragraph 13, probably</p> <p>2 Paragraph 14, in whole or in part -- I think that</p> <p>3 changed a little over time. Certainly Paragraph 15</p> <p>4 has changed over time, because I've added that I've</p> <p>5 been a consultant for the FDA's office of generic</p> <p>6 drugs, that I'm currently serving as an ad hoc</p> <p>7 advisor to the national finance -- advisor to the</p> <p>8 Engineering invention -- Medicine's Committee on the</p> <p>9 security --</p> <p>10 THE COURT REPORTER: I'm sorry, one</p> <p>11 more -- you're serving as an ad hoc advisor to</p> <p>12 the...</p> <p>13 THE WITNESS: I am currently serving</p> <p>14 as an ad hoc advisor to the National Academy of</p> <p>15 Sciences, Engineering and Medicine's Committee</p> <p>16 on Security of America's Medical Supply --</p> <p>17 Product Supply Change. That's new.</p> <p>18 So 16 has definitely been updated to</p> <p>19 reflect the fact that I was -- that I have</p> <p>20 submitted testimony in another cGMP violation</p> <p>21 matter, which is the case that we were just</p> <p>22 talking about, the Blue Cross Blue Shield</p> <p>23 versus GlaxoSmithKline case. But also, that</p> <p>24 I've been involved in a variety of other cases</p> <p>25 since that case concluded. That information is</p>	<p style="text-align: right;">Page 201</p> <p>1 don't have enough time to do this, in all fairness.</p> <p>2 I'm more than happy to go through, line-by-line, my</p> <p>3 report and other reports. But, you know, if you're</p> <p>4 going to refer me to the reports that I -- that I</p> <p>5 wrote for the center case, I want to do them all,</p> <p>6 not just one, and not just cherry pick things that</p> <p>7 might be convenient for you, but everything.</p> <p>8 MR. HONIK: Yeah. And I think our</p> <p>9 time is up. Justin, can you report to us where</p> <p>10 we are?</p> <p>11 THE VIDEOGRAPHER: Do you want me to</p> <p>12 go off the record and do that?</p> <p>13 MR. HONIK: Sure, off the record.</p> <p>14 THE VIDEOGRAPHER: We are going off</p> <p>15 the record. The time is 5:00 p.m.</p> <p>16 (Whereupon, a discussion was held off</p> <p>17 the record.)</p> <p>18 MR. HONIK: Counsel has exceeded the</p> <p>19 10-hour limit, number 1. Number 2, with --</p> <p>20 astonishingly, with about 60 or 30 seconds</p> <p>21 left, he produced one of, apparently, multiple</p> <p>22 reports that are revealed in Dr. Conti's CV,</p> <p>23 and has asked her to determine what parts of</p> <p>24 it, if any, are replicated or appear in the</p> <p>25 current report. She's not had an opportunity</p>

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<p style="text-align: right;">Page 202</p> <p>1 to look at the document, and now defendants 2 exist -- insist, having exceeded the 10-hour 3 limit, to mark an exhibit that the witness has 4 not seen or been given an opportunity to 5 review. Therefore, I object to its being 6 marked. 7 It's sort of like piling on at the end 8 and clipping news articles and asking them to 9 be attached as exhibits. It's entirely 10 improper. You haven't asked the witness a 11 single question, nor has she had an opportunity 12 to look at it, and I object. 13 MR. OSTFELD: I will state, for the 14 record, that the question I asked the witness 15 was, "Did you copy or adapt portions of your 16 expert report from Blue Cross Blue Shield 17 Association versus GlaxoSmithKline for your 18 declaration in this case?" 19 The witness then indicated that she 20 wished to go, paragraph by paragraph, through 21 her report and to compare it to the reports 22 from Blue Cross Blue Shield Association. 23 MR. HONIK: She did no such thing. 24 THE WITNESS: -- mischaracterizing my 25 statement --</p>	<p style="text-align: right;">Page 204</p> <p>1 of the document. She merely asked to look at 2 the document. And for minutes that took you 3 past, as a matter of fact, the 10-hour limit, 4 it's not my position that you went past the 5 10-hour time limit. You went past the 10-hour 6 time limit. 7 And you then finally offered her one 8 of the multiple reports that she prepared. And 9 she tried to answer your question, and it 10 ended. That's an improper use of an exhibit. 11 It is beyond the pale to have done so with 30 12 or 60 seconds. It's the worst form of lawyerly 13 got you imaginable, and I object. And we'll 14 move to strike at the appropriate time. 15 I can't prevent you saying it's 16 being -- it's being marked, but we will move to 17 strike it. And it is really unseemly that you 18 have chosen to do that. 19 That concludes the deposition. 20 MR. OSTFELD: This report is being 21 marked, and I will provide -- 22 THE COURT REPORTER: I can only do 23 this one at a time. Greg -- Greg, this report 24 is being marked... 25 MR. OSTFELD: Hang on. Madam Court</p>
<p style="text-align: right;">Page 203</p> <p>1 MR. OSTFELD: Excuse me. Excuse me. 2 Please -- please allow me to finish my 3 statement for record, Ruben. I didn't 4 interrupt you. 5 And, Dr. Conti, I didn't interrupt 6 you. And these are being -- these are -- these 7 are records that are being made for the court. 8 So I then put into the record the one 9 report that I have in my possession from that 10 case so that Dr. Conti could reference it to 11 complete her analysis. There was a question 12 pending. We were trying to answer it in the 13 manner in which she wanted to answer it, which 14 was going through her report. And Mr. Honik 15 has now taken the view that time has expired. 16 I would object to terminating the 17 deposition when there was a pending question 18 and where counsel was attempting to provide 19 Dr. Conti with the mechanism she asked for to 20 answer the question. 21 MR. HONIK: Yeah. Mr. Ostfeld, that 22 is about as big a distortion as one could -- 23 could possibly state. The witness did not ask 24 to go line by line. You asked her a question 25 without the -- excuse me -- without the benefit</p>	<p style="text-align: right;">Page 205</p> <p>1 Reporter, can you please hang on? I'll let 2 you -- don't talk over me so that you can't 3 hear what I'm saying. 4 Ruben, we know you are concluding the 5 deposition, but you can't do it the way you are 6 doing it. Okay? We still have to finish the 7 deposition the right way. You can't just stop 8 it. Okay. Yes, we can't just go off the 9 record in a ladder. 10 MR. HONIK: Yes, we're -- 11 MR. GOLDBERG: Now, I'm gonna say 12 something, Ruben. 13 Dr. Conti, during the deposition, you 14 were texted by counsel. I'm going to ask you 15 that you not delete that text. Do not delete 16 any text that you received from counsel during 17 this deposition. 18 MR. HONIK: You're mischaracterizing 19 the record. 20 MR. GOLDBERG: Ruben -- 21 MR. HONIK: No. No. No. No. 22 MR. GOLDBERG: We will address this 23 issue later, but it is important that this 24 record be preserved. And I don't want 25 Dr. Conti to leave until we have made that</p>

<p style="text-align: right;">Page 206</p> <p>1 record.</p> <p>2 MR. HONIK: You can make whatever</p> <p>3 record you want.</p> <p>4 MR. GOLDBERG: Now --</p> <p>5 THE COURT REPORTER: I can't do this.</p> <p>6 I can't. I can't do it. One at a time. One</p> <p>7 at a time.</p> <p>8 MR. GOLDBERG: Okay. Now that we have</p> <p>9 done that -- okay. Let the record reflect that</p> <p>10 the witness has just walked away during the</p> <p>11 deposition.</p> <p>12 MR. HONIK: Are you 12 years old,</p> <p>13 Seth?</p> <p>14 MR. GOLDBERG: No.</p> <p>15 MR. HONIK: As far as the witness is</p> <p>16 concerned, it's over. There are no more</p> <p>17 questions that you may be permitted to ask</p> <p>18 Dr. Conti. She can get up and stretch her</p> <p>19 legs, do whatever she wishes in the world,</p> <p>20 number 1.</p> <p>21 Number 2, Mr. Ostfeld apparently has</p> <p>22 now attached as an exhibit a report that makes</p> <p>23 reference to an Austin and Burke PowerPoint</p> <p>24 that Teva clawed back. So Teva has now waived</p> <p>25 their privilege as to that document being</p>	<p style="text-align: right;">Page 208</p> <p>1 am attaching as an exhibit and putting in.</p> <p>2 And I will provide it to the court</p> <p>3 reporter as an exhibit. And we certainly do</p> <p>4 not waive anything that is not in the public</p> <p>5 court file in that case.</p> <p>6 (Whereupon, Exhibit Conti 8 was marked</p> <p>7 for Identification.)</p> <p>8 MR. HONIK: Anything else?</p> <p>9 MR. OSTFELD: That's it for me.</p> <p>10 MR. HONIK: We're concluded. Thank</p> <p>11 you, Jamie.</p> <p>12 (Whereupon, the deposition concluded</p> <p>13 at 5:08 p.m.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 207</p> <p>1 admitted into evidence into this case. Is</p> <p>2 there anything else you need to say?</p> <p>3 MR. GOLDBERG: Yeah, I do. And then</p> <p>4 certainly Mr. Ostfeld can.</p> <p>5 We are keeping this deposition open,</p> <p>6 because the witness has now testified during</p> <p>7 the deposition, potentially, to documents that</p> <p>8 she has not produced, including her invoices.</p> <p>9 It's not clear whether there were other</p> <p>10 documents that she hasn't produced. We'll come</p> <p>11 back to you on that, Ruben. But we are not</p> <p>12 closing this deposition until we get a complete</p> <p>13 record from Dr. Conti of the work she has done</p> <p>14 in response to the deposition notice.</p> <p>15 Now, I'll turn it -- turn it to</p> <p>16 Mr. Ostfeld to address your last point.</p> <p>17 MR. OSTFELD: I am putting into the</p> <p>18 record as an exhibit a document titled, "Expert</p> <p>19 Report of Rena Conti, Ph.D" from the case</p> <p>20 Blue Cross Blue Shield Association versus</p> <p>21 GlaxoSmithKline.</p> <p>22 This is taken from the public court</p> <p>23 file in that case. It has the court stamp at</p> <p>24 the top of it. It is document 286-2 from that</p> <p>25 court file. That is the only document that I</p>	<p style="text-align: right;">Page 209</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I, Jamie I. Moskowitz, a Shorthand</p> <p>4 (Stenotype) Reporter and Notary Public, do hereby</p> <p>5 certify that the foregoing Deposition, of the</p> <p>6 witness, RENA M. CONTI, Ph.D., taken at the time and</p> <p>7 place aforesaid, is a true and correct transcription</p> <p>8 of my shorthand notes.</p> <p>9 I further certify that I am neither</p> <p>10 counsel for nor related to any party to said action,</p> <p>11 nor in any way interested in the result or outcome</p> <p>12 thereof.</p> <p>13 IN WITNESS WHEREOF, I have hereunto set</p> <p>14 my hand this 17 day of February 2022.</p> <p>15</p> <p>16</p> <p>17  Jamie Ilyse Moskowitz License No. XI01658</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 RUBEN HONIK, ESQUIRE</p> <p>2 ruben@honiklaw.com</p> <p>3 February 17, 2022.</p> <p>4 RE: In Re: Valsartan, Losartan, Et Al v.</p> <p>5 2/11/2022, Rena Conti, PH.D (#5073516)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 erratas-cs@veritext.com</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>	<p>1 In Re: Valsartan, Losartan, Et Al v.</p> <p>2 Rena Conti, PH.D (#5073516)</p> <p>3 ACKNOWLEDGEMENT OF DEPONENT</p> <p>4 I, Rena Conti, PH.D, do hereby declare that I</p> <p>5 have read the foregoing transcript, I have made any</p> <p>6 corrections, additions, or changes I deemed necessary as</p> <p>7 noted above to be appended hereto, and that the same is</p> <p>8 a true, correct and complete transcript of the testimony</p> <p>9 given by me.</p> <p>10</p> <p>11 _____</p> <p>12 Rena Conti, PH.D Date</p> <p>13 *If notary is required</p> <p>14 SUBSCRIBED AND SWORN TO BEFORE ME THIS</p> <p>15 _____ DAY OF _____, 20____.</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 NOTARY PUBLIC</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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